CERTIFICATE.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1894.

No. ~~941~~.

THE STEAMSHIP "DELAWARE," HER ENGINES, &c., THOMAS THOMAS, CLAIMANT, APPELLANT,

vs.

CHARLES H. WINNETT ET AL.

ON A CERTIFICATE FROM THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

FILED MARCH 13, 1895.

(15,825.)

(15,825.)

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., MARCH 14, 1895.

1 United States Circuit Court of Appeals for the Second Circuit.

CHARLES H. WINNETT, JOHN FLANNERY, EDWARD L. C. BUYATTI, Conrad Falkenberg, John Walle, and Ernest Lundgreen, Libelants and Appellees,

against

THE STEAMSHIP DELAWARE, HER ENGINES, ETC., and THOMAS THOMAS, Claimant and Appellant.

A decree in favor of the libellants in this cause having been made in the district court of the United States for the eastern district of New York and an appeal having been taken therefrom to this court, and the cause having come for final hearing, certain questions of law arose, concerning which this court desires the instruction of the Supreme Court of the United States for its proper decision. The facts out of which the questions arose are as follows:

Statement of Facts.

The libel to recover damages by collision was filed by the owner, master, and crew of the steam-tug Talisman, which was sunk on September 16th, 1893, by the steamship Delaware, in Gedney's channel, at the outer entrance of New York harbor, and within three miles from land.

The steamship Delaware was engaged in the business of transporting petroleum in bulk from American ports to Europe.

2 She was returning from London to New York without cargo, having water ballast only, as was customary on her westward voyages. When approaching New York she took a duly licensed Sandy Hook pilot, who was in charge of her navigation at the time of the collision. By the negligence of this pilot, who failed to take any precautions to avoid the Talisman, the steamship struck and sank the tugboat Talisman. One of the crew was drowned and severe personal injuries were sustained by the master.

The decree of the district court awarded damages for the loss of the tugboat and the personal injuries of the master.

The collision having been caused by the negligent navigation of the Delaware, it was nevertheless claimed that neither the said steamship nor her owners were liable therefor by reason of section 3 of an act of Congress of the United States entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," approved February 13, 1893 (being 27 Statutes at Large, 2nd session, chap. 105).

In support of said defense it was shown that the Anglo-American Oil Company, a corporation of Great Britain, was the owner of the steamship Delaware, and that due diligence had been exercised by the said company to make said steamship in all respects seaworthy and properly manned, equipped, and supplied within the provisions of section 3 of said act.

3 Upon these facts this court desires instructions upon questions of law for the proper decision of said cause, viz:

1. Whether the provisions of the third section of said act of Congress exonerate a merchant vessel from loss or damage to another vessel by collision resulting from faults in navigation, provided the owner of such merchant vessel has exercised the diligence required by the said section.

2. Whether said act exonerates a vessel which at the time is in ballast and not transporting merchandise or cargo.

3. Whether said act is to be construed to relieve the owner of a British vessel from liability for collision in American waters when in charge of a duly licensed Sandy Hook pilot, taken as required by law.

4. Whether said act is to be construed to relieve a vessel or its owners from liability to those on another vessel who may sustain personal injuries arising from negligent collision.

5. Whether, upon the above statement of facts, the steamship Delaware is exonerated for her collision with the tug Talisman and for the damages to person and property resulting therefrom.

And to that end this court hereby certifies said questions to the Supreme Court of the United States.

WM. J. WALLACE,
Circuit Judge.
E. HENRY LACOMBE,
Circuit Judge.
N. SHIPMAN,
Circuit Judge.

4 UNITED STATES OF AMERICA, *Second Circuit,* } *ss:*

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing certificate in the case entitled Charles H. Winnett, John Flannery, Edward L. C. Buyatti, Conrad Falkenberg, John Walle, and Ernest Lundgreen, libellants and appellees, against The Steamship Delaware, her engines, etc., and Thomas Thomas, claimant and appellant, was duly filed and entered of record in my office by order of said court on the 11th day of March, 1895, and, as directed by said court, the said certificate is by me forwarded to the Supreme Court of the United States for its action thereon.

In testimony whereof I have hereunto subscribed my name and affixed the seal of the said United States circuit court of appeals for the second circuit, at the city of New York, in the southern district of the State of New York, this twelfth day of March, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Seal United States Circuit Court of Appeals, Second Circuit.

JAMES C. REED,
Clerk United States Circuit Court of Appeals for the Second Circuit.

5 [Endorsed:] U. S. circuit court of appeals for the second circuit. Charles H. Winnett and others, lib'ts & appellees, against The Steamship Delaware, her engines, &c., and Thomas Thomas, claimant and appellant. Request for instructions. United States circuit court of appeals, second circuit. Filed Mar. 11, 1895. James C. Reed, clerk.

Endorsed on cover: Case No. 15,825. U. S. circuit court of appeals, second circuit. Term No., 941. The Steamship "Delaware," her engines, &c., and Thomas Thomas, claimant, appellant, *vs.* Charles H. Winnett *et al.* (Certificate.) Filed March 13, 1895.

161 U.S. 459

161 U.S. 459

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 570.

THE STEAMSHIP "DELAWARE," HER ENGINES, &c.,
THOMAS THOMAS, CLAIMANT, APPELLANT,

vs.

CHARLES H. WINNETT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

PETITION FILED MARCH 25, 1895.
RETURN FILED APRIL 25, 1895.

(15,843.)

(15,843.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1895.

No. 570.

THE STEAMSHIP "DELAWARE," HER ENGINES, &c., THOMAS THOMAS, CLAIMANT, APPELLANT,

vs.

CHARLES H. WINNETT ET AL.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SECOND CIRCUIT.

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JUDD & DETWEILER, PRINTERS, WASHINGTON, D. C., JULY 19, 1895.

time hereinafter named the sole owner of the steam tugboat Talisman, and that said tugboat up to the time of the collision hereinafter mentioned was tight, staunch, strong, and in every respect seaworthy, and in every way fitted for the business in which she was engaged. That said Winnett was the master of said tugboat, and that the other libellants were part of the officers and crew of said tugboat at the time of said collision.

Second. That on Saturday morning, about 9 o'clock, September 16th, 1893, the said steam tugboat Talisman left quarantine dock, Staten island, fully equipped and manned, under the command of the libellant Winnett, as master, who had had a long experience in such business as master, bound to sea to look for a tow. That while said tugboat was passing down through Gedney's channel, she took a pilot off from an outward-bound steamship, and put him on board of the station pilot-boat, which at that time was about one mile northwest from her proper position, and she was unable to reach it without being towed thereto. That the request of those on board of said pilot-boat, and as a favor to them, without asking or
4 expecting compensation therefor, the said steam tugboat took the towrope of said pilot-boat, and made the same fast to the stern bitts of said tugboat, and started to tow her across Gedney's channel on a south-southeast course, to place her in proper position for receiving pilots from outward-bound steamships and other vessels. That the weather at the time was threatening and squally and rainy, and the wind light from the westward and tide flood, and there was some swell or roll to the sea. That while said steam tugboat was towing said pilot-boat slowly ahead through the water, the weather began to clear up, and as it did so, the steamship, which proved to be the iron tank steamship Delaware, appeared bearing to the eastward over a mile distant, and heading a little south of west. That said steam tugboat blew one blast of her whistle, which was answered by the steamship with one blast of her whistle, and said steam tugboat continued on her south-southeast course. That a few minutes after this, the master of the said tugboat, fearing that the steamship was approaching too near for safety, again blew one blast of the tugboat's whistle, and receiving no response thereto, ordered one of the deck hands to let go of the towrope to the pilot-boat, but before the order could be executed the steamship struck the said tugboat Talisman a very heavy blow with her iron stem at a right angle on the tug's port side, cutting into the port side of the said tugboat beyond her keel, the steamship's iron stem cutting off the stern part of the tug's lifeboat, which was secured amidships on the tug, when said tugboat filled with water and sank almost immediately. That the master of said tugboat, who was at her wheel, was thrown down and his left arm broken, and one of the crew was killed and went down with the boat.

That said collision took place between 10 and 11 o'clock that morning in the middle of Gedney's channel, where said tugboat now lies sunk.

Third. That said tugboat, with all her outfit, coal and
5 stores, as well as the personal effects of her master, officers

and crew, have become a total loss. That the value of said tugboat with her outfit and stores is the sum of $15,000. That the value of the personal effects of the master, officers and crew of said steamtug, is the sum of $2,500. That the damages sustained by the master in the breaking of his arm, for medical services, loss of time, and disability, with the shock to his whole system, is estimated at $2,500. That payment of said damages has been demanded from said steamship and refused.

Fourth. That said collision and damages were not due to any fault or negligence on the part of these libellants, nor to those in charge of the said steam tugboat Talisman, but were wholly due to those in charge of the steamship Delaware, in that they had the steam tugboat with her tow on the starboard side, and did not keep out of their way; in that the said steamship did not have a proper and sufficient lookout, properly stationed and kept on board said steamship; in that said steamship did not obey said signals given by said steam tugboat, and answered by said steamship; in that said steamship did not port her helm and go under the stern of said pilot-boat, but starboarded her helm; in that said steamship did not stop and back, or take any proper step to avoid said collision; in that said steamship was running at too great a rate of speed; and in other faults and negligences on the part of the said steamship Delaware, and of those in charge of her, which these libellants will show on the trial of this action.

Fifth. That said steamship is now or will be within the port of New York and within the jurisdiction of this honorable court.

Sixth. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this honorable court.

Wherefore the libellants pray that process in due form of law may issue against the said steamship Delaware, her engines,
6 boilers, &c., and that all persons interested therein may be cited to appear and answer the foregoing, and that these libellants may be decreed their damages sustained by said collision, and that said steamship Delaware may be condemned and sold to pay the same with interest and costs, and that they may have such other and further relief in the premises as may be just.

C. H. WINNETT.

WINGS, SHOUDY & PUTNAM,
Proctors for Libellants.

Sworn to before me this 20th day of September, 1893.

JAMES FORRESTER,
[L. S.] *Notary Public, Kings Co.*

Cert. N. Y. Co.

(Endorsed:) Libel. Filed 20th day of September, 1893.

7 To the Honorable Charles L. Benedict, United States district judge for the eastern district of New York:

The answer of Thomas Thomas, claimant of the steamship Delaware, to the libel of Charles Henry Winnett, John Flannery, E. L. C. Buyatti, Conrad Falkenberg, James Walle, and Goss Lunngrund, against said steamship, her engines, etc., and against all persons intervening for their interest therein, in a cause of collision, civil and maritime, alleges as follows:

First. He denies any knowledge or information sufficient to form a belief in relation to the matters alleged in the first article of the libel.

Second. He denies any knowledge or information sufficient to form a belief, whether on Saturday morning, about nine o'clock, September 16th, said steam tugboat Talisman left quarantine dock, Staten island, fully equipped and manned, under command of the libellant Winnett, as master, or whether the libellant Winnett had had a long experience in such business as master, or where the steamtug was bound. He denies any knowledge or information sufficient to form a belief, whether said tugboat was passing down through Gedney's channel, but admits that she took a pilot off from an outward-bound steamship and put him on board the station pilot-boat, which at that time was about three-fourths of a mile northwest from her proper position, which she was unable to reach without being towed. He denies any knowledge or information sufficient to form a belief, whether, at the request of those on board the pilot-boat, as a favor to them, and without expectation of reward, said steam tugboat took the towrope of said pilot-boat, and made the same fast to the stern bitts of said tugboat, or whether she started to tow her across Gedney's channel on a south-southeast course to her proper station, but admits that at the time of the collision,

8 the Talisman was towing the pilot-boat across the channel, on a course south or south by west. He admits that the weather at the time was threatening and squally and rainy, and the wind light from the westward and tide flood, and there was some swell or roll to the sea, and avers that from time to time the atmosphere was thick. He admits that while the steam tugboat was towing the pilot-boat, the weather began to clear up, and that the steamship Delaware, bearing to the eastward probably about a mile, and heading a little south of west, was disclosed to the view of those on board the Talisman. But he denies that said steam tugboat thereupon blew one blast of her whistle, or that the steamship answered with one blast of her whistle, and upon information and belief, he denies that the said steam tugboat continued on her course. He denies that a few minutes after this the master of the said tugboat again blew a blast of his whistle. And upon information and belief, he denies all the other matters contained in the second article of the libel.

Third. Upon information and belief, he denies the matters alleged in the third article of the libel.

Fourth. Upon information and belief, he denies the matters contained in the fourth article of the libel.

Fifth. He admits the matters contained in the fifth article of the libel.

Sixth. He admits the jurisdiction, but denies the other matters contained in the sixth article of the libel.

Seventh. For a separate defense, claimant alleges that on the morning stated, the steamer bound inwards in charge of a licensed Sandy Hook pilot, was making for the outer buoys of Gedney's channel on a course slightly to the south of west, the weather being thick with frequent squalls. When the steamer was at a considerable distance out to sea, the pilot saw the tugboat and the pilot-
9 boat, with her sails up and peaks dipped, lying to the northward of the channel. A temporary shower, with thickening atmosphere, cut off their view until the steamer, continuing her course, was nearing the outer buoy of Gedney's channel, when the tugboat was again perceived crossing the channel at an angle, and bearing somewhat on the steamer's starboard bow. The outer red buoy of Gedney's channel was then about a point and a half on the starboard bow, and to have acceded to the single blast which was blown by the Talisman about this time would have involved collision and a risk of fouling the chain of the outer or Can buoy with the steamer's propeller. The steamer therefore held her course toward the southerly side of the channel, in the belief that the tugboat would see the obstacles which prevented the steamship from making the desired maneuver, and would starboard or slow up in speed, which she might easily have done, as she was proceeding with her tow against a strong flood tide. The Talisman, however, persisted in crossing ahead of the steamer, and thereupon the risk of collision being imminent, the steamer's wheel was put hard-a-starboard and her engines full speed astern. Notwithstanding these precautions, and that the speed of the vessel, which was about eight or nine knots when the tugboat was sighted, was reduced to nearly a stand-still, the tugboat Talisman continued at full speed directly for and across the course of the steamer, thereby placing herself directly in front of the steamer's stem, with the result that she was struck about amidships and carried a distance of about five hundred or six hundred feet to the lower edge of the channel, where she sunk, and now lies about on a line with the lower or black buoys marking the southwesterly side of the channel.

Eighth. Claimant avers that the said collision is ascribable to the fault of the Talisman in unnecessarily impeding the steamship's progress into and up Gedney's channel, in the course marked off for large ocean-bound vessels; in failing to slacken speed, or stop and reverse, as required by law, when the risk of collision
10 became imminent, and because she was improperly and inefficiently manned and equipped, and he alleges that the said tugboat is chargeable with other faults and negligences, which will more fully appear upon the examination of the evidence on the trial.

Ninth. Claimant further avers that the steamship Delaware is a tank steamship, engaged in the business of transporting merchandise or property to and from ports in the United States of America

to ports in Europe, and that her owners exercised all due diligence to make the said vessel in all respects seaworthy, and properly manned, equipped and supplied, and that if the navigation of the said steamship, at the time and place mentioned, was in any respect negligent or faulty, which is denied, then by section 3 of an act of Congress of the United States, entitled An act relating to navigation of vessels, etc., approved February 13th, 1893, neither the steamship Delaware, or her owner or owners, became or are liable to be held responsible for the damages and losses alleged to have resulted therefrom or have been sustained thereby.

Wherefore the claimant prays that said libel may be dismissed, with costs.

CONVERS & KIRLIN,
Proctors for Claimant.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

J. Parker Kirlin being duly sworn, says that he is one of the proctors for the claimant herein; that the foregoing answer is true according to his information and belief, derived from statements made to him by the officers and crew of said steamship Delaware, and that the reason why this verification is not made by the claimant is, that he is now absent at sea.

J. P. KIRLIN.

Sworn to before me this 28th day of October, 1893.

GEO. A. BAKER,
[L. S.] *Notary Public, N. Y. City and County.*

(Endorsed:) Answer. Filed October 28, 1893.

11 United States District Court, Eastern District of New York.

CHARLES H. WINNETT *et al.*
vs.
S. S. "DELAWARE." } Before Hon. Chas. L. Benedict, Judge.

BROOKLYN, *Feb.* 15 *and* 19, 1894.

Cause called. Hearing ordered.

Appearances: Wing, Shoudy & Putnam (Mr. Putnam) for libellants; Convers & Kirlin (Mr. Kirlin) for claimant.

Mr. Putnam reads libel.

Mr. Kirlin reads answer.

Mr. Putnam reads deposition of GUSTAV LUNNGRUND, taken on behalf of the libellants as follows:

I live at 34 Hamilton avenue, Brooklyn, and was a fireman on the tug Talisman at the time of the collision with the steamer. I had been on her about six weeks, and previously I had been on her five months in the winter. I have been on tugboats in New York about a year and a half. My home is Sweden, and I speak some English. It was my watch below at the time of this collision. I

had gone below and was asleep. The first I knew of it was hearing the cook call me to come up. The first deck hand, Walle, was below with me. He came up first. I came right up afterwards without any clothes, only what I slept in. When I came out on deck I came out on the port side.

By Mr. PUTNAM:

Q. How close was the steamer at that time?
A. Within 10 feet.
12 Q. Which way did you run?
A. I ran aft on the port side.
Q. How far aft did you get at the time of the collision?
A. I can't remember just.
Q. When the steamer struck you did you stay on the tug or did you fall overboard?
A. I fell overboard.
Q. Which side?
A. Port side.
Q. How did you get out of the water?
A. I was picked up by the pilot-boat yawl.
Q. And that took you alongside?
A. Yes, alongside the steamer.
Q. Did you lose anything?
A. Yes, I lost everything I had.
Q. Except what clothes you had on?
A. Yes.
Q. Have you a list of the things you lost?
A. Yes.
Q. Is this the list I show you?
A. Yes.

List is marked Libellant's Exhibit 1 of this date.

Q. Have you put down on this paper the prices of the things that you had?
A. Yes.
Q. Is that the price that they actually cost you new?
A. Yes.
Q. Some of the things you had had some time?
A. Yes.
Q. How long had you had the suit of clothes?
A. Six months, I guess.

Cross-examination read by Mr. PUTNAM:

Q. How long had you had the other things?
A. I can't remember, sir, exactly; I think six months.
Q. Where was your berth?
A. Forward.
Q. Did you go back aft of the engine-room before the collision?
A. Yes.
Q. Did you see anybody at the stern of the boat?

A. Yes, I see the first deck hand.
Q. What was he doing there?
A. He ran aft before me.
Q. Didn't you see anybody else?
A. No.
13 Q. Did you see the man that was drowned?
A. No, I didn't see him.
Q. Did you see the engineer?
A. No.
Q. Was your vessel going ahead at the time?
A. Yes.
Q. Full speed?
A. I don't know that.
Q. You know she was going ahead?
A. Yes.
Q. Did you see the towline that led to the pilot-boat?
A. Yes, I see it.
Q. Was that tight or not in the water?
A. Tight.

Mr. Putnam reads deposition of JAMES WALLE, taken on behalf of the libellants, as follows:

I live in Brooklyn, and I was first deck hand on the tug Talisman; the last time I had been deck hand on her was since the first of August, but I was on her last winter six or seven months altogether. Before the collision it was my watch below. I had gone below just as soon as the tug passed out of the Narrows.

By Mr. PUTNAM:

Q. Do you know what time that was by the clock?
A. After 8 o'clock, or close to 9 o'clock.
Q. While you were below did you get to sleep or not?
A. No, I didn't get to sleep.
Q. While below did you hear any whistles?
A. Yes, sir.
Q. What whistles did you hear?
A. I heard one whistle from our tug.
Q. Did you hear that more than once?
A. Yes, I heard it about five minutes afterwards, another signal whistle.
Q. Single blast?
A. Yes.
Q. Did you hear any answer to either of those whistles?
A. Yes, sir; I heard answer after the second whistle of one whistle.
Q. You heard an answer of one blast to the second signal of one blast?
A. Yes.
14 Q. Did you think there was going to be any collision then?
A. No, I thought not, surely.

Q. What happened next?
A. I heard the cook hail to us to come on deck quick.
Q. Were you still below when the cook hailed?
A. Yes, sir; I was in my berth.
Q. Did you come right up?
A. Yes, sir.
Q. Who else was below besides you?
A. The fireman was slumbering.
Q. Who came up first?
A. I came up first.
Q. When you came up you first came through the gangway from below upon deck; whereabouts is the gangway?
A. The gangway went right through the kitchen, and the kitchen was right underneath the pilot-house, and the forecastle was underneath the main deck forward.
Q. When you came up through the gangway and through the kitchen, which way did you come out through the house, which side?
A. On the port side.
Q. Where did you first see the steamer?
A. I saw the steamer right in the kitchen door.
Q. When you came through the door how near was the steamer?
A. Just about 8 or 10 fathom off, or somewhere very close to us.
Q. When you saw the steamer, did you think it would hit?
A. Yes; I was sure it was going to hit.
Q. What was the appearance of the steamer's bow whether she was going ahead or stopped?
A. She looked to be going very fast; I could see white foam.
Q. How high was the foam?
A. Three or four feet high.
Q. You thought there would be a collision?
A. Yes, sir.
Q. Which way did you go?
A. I went aft on the port side slow until I came to the engine. I stopped a little while, a few seconds to watch my chance. In the middle of the boat I could watch my chance; if it was going to hit aft or forward; if it was going to hit aft I was going to run forward, and if — was going to hit forward I was going to run aft.
Q. What I understand is you stopped by the engine-room door to wait?
A. Yes, to be sure where he was going to hit.
Q. Which way did you go at the time of the collision; forward or aft?
A. I went aft.
Q. When the steamer struck whereabouts were you?
A. I was aft, just to the rail aft.
Q. What did you do when the steamer's stem struck the tugboat?
A. I took hold of the pilot-boat's towing line; I jumped overboard just the same moment she struck us.
Q. Did you go under, or did the rope keep you up?

A. No, I went underneath the water right away.
Q. Did you hold onto the line?
A. Yes, sir; all the time.
Q. How long were you underneath the water?
A. I couldn't tell; I thought to let go, but I still held onto it, the line was shaking.
Q. And you finally came up?
A. Yes, sir.
Q. How were you picked up?
A. When I saw the pilot-boat's yawl I let go my hold of the line and swam towards the yawl.
Q. And they picked you up?
A. Yes.
Q. Who else was picked up in the yawl?
A. The fireman was after me, and then the cook.
Q. So there were three that were saved in the yawl?
A. Yes, there were two yawls in the water, but we got picked up in one yawl, all three of us.
Q. After you got in the yawl what vessel were you brought aboard of?
A. I was brought aboard of the steamer Delaware.
Q. And you came alongside the steamer?
A. Yes, sir.
Q. Which side?
A. On the starboard side.
Q. How did you come up?
A. Come up by the ladder over the side.
Q. Was there anybody else from your boat that was on the steamer besides those that were picked up in the yawl?
A. Yes, the captain was.
Q. And the engineer?
A. Yes, sir, and the second deck hand.
16 Q. Which got aboard the steamer first, they or you, from the yawl?
A. They got aboard the steamer first.
Q. Did you hear any talk between the engineer on the deck of the steamer and your men down in the yawl?
A. Yes, sir; I asked him who was saved.
Q. You sung out to the engineer and asked him who was saved?
A. Yes, and he said the captain and the second deck hand.
Q. Was there anything else said between you?
A. He asked me who we had got in the boat, and I said the fireman, cook and me; and he asked me where Fred. Freeman was, the other fireman.
Q. What did you say?
A. I said he wasn't in the boat; we hailed to the pilot-boat and asked if they picked him up in the pilot-boat, and they said no.
Q. So you knew then he was lost.
A. Yes.
Q. Did he say anything about sending the man aft?
A. No, not then.

Q. Did he say anything about putting his engine ahead before the collision?

A. No, I didn't hear him say anything about that so long as I was alongside the steamer.

Q. After you got aboard the steamer was there anything said about his engines?

A. He said something, I forgot what he said, no, we talked.

Q. After you got aboard the steamer did you say anything about whether he was putting his engines ahead before the collision or not?

A. No, he didn't say anything.

Q. Did he have any talk with you about that after the collision?

A. Yes.

Q. Where was that?

A. I asked him how the engine was going when we were on the ferry-boat from Staten island to New York.

Q. What did he say?

A. He said the engine was going ahead slow.

Q. Did he say anything about sending a man aft to cast off the line?

A. Yes, he said he sent him aft to cast off the line, him and the fireman. That fireman, Fred. Freeman, he sent them aft to let go the line.

17 Q. Did he say when you were alongside the ship at any time that he had opened her out, that he had rushed to the levers and opened the Talisman out full speed?

A. No.

Q. Did you lose anything by the collision?

A. Yes, I lost everything I had on board.

Q. Is this a list?

A. Yes, sir.

List is marked Libellants' Exhibit 2 of this date.

Q. Have you put down there the prices that the things cost you?

A. So far as I can remember I have put down the prices they cost me; some things I had from the old country, I don't know what they cost; bed clothes and those things; I don't know the prices there.

Q. You put them down as near as you can remember?

A. Yes, sir.

Q. Some you had had a long time and some were new?

A. Yes, sir.

Q. Can you tell which were new?

A. The first suit of clothes was a uniform suit I had over in the Marine hospital where I was working before I came to the Talisman.

Cross-examination by Mr. KIRLIN:

Q. How long had you had these other things?

A. I couldn't tell you; some I had a long time and some I had a short time.

Q. How about the flannel shirts, were they new?
A. I suppose they were mostly all new—one year old.
Q. Did you have anything in tow when you passed through the Narrows about 8 o'clock?
A. No, sir.
Q. Where did you find this pilot-boat?
A. I don't know; I was below at the time we picked her up.
Q. You didn't have the pilot-boat when you went out through the Narrows?
A. No, sir.
Q. Do you know what time it was that you came on deck?
A. No; I don't know.
Q. You say you heard one whistle, and then about five minutes afterwards another whistle?
A. Yes, sir.
18 Q. To which there was answer of a single whistle?
A. Yes, sir.
Q. You don't know where that answer came from, I suppose?
A. No; I suppose from the steamer.
Q. When you came on deck the steamer was 8 or 10 fathoms away?
A. Yes.
Q. How was she heading with reference to your boat?
A. Heading right to our bow.
Q. How did the ships bear with reference to each other when you came on deck?

Witness makes diagram hereto annexed marked A.

(Here follows diagram marked p. 18*a*.)

Q. I suppose you didn't stop to notice particularly just how high the foam was that was breaking from the bow?
A. No, sir, I didn't; I saw she was coming fast.
Q. You simply knew she was coming ahead?
A. Yes, very fast.
Q. You didn't know how her engines were; you couldn't tell whether she was coming very fast?
A. I could tell from the foam; from my experience I can tell she was coming fast; I have seen so many steamers.
Q. When you got aft did you see the fireman and the other man that had been sent aft to take the rope?
A. Yes, sir.
Q. Was the rope fast when you took hold of it?
A. Yes, sir.
Q. Was it taut?
A. Yes, sir.
Q. How far off was the pilot-boat?
A. About 60 fathoms from the tug.
Q. Wasn't it a good deal less than that?
A. It was a long towline; I suppose the towline was 60 fathoms.

Diagram A

No. 570.
"Delaware"
v.
Wennett
p. 18a

Q. I want to know how far the pilot-boat was away; not the length of the towline?

A. She was away the whole length of the line.

Q. How do you know that?

A. I suppose so; I don't know.

Q. Are you sure you came up alongside the starboard side of the steamer?

A. Yes, sir.

19 Q. Wasn't it the port side?

A. No, sir.

Q. Are you as sure you were on the starboard side as you are of everything else you have testified to?

A. I am not sure; the steamer was heading in; she was coming up on the starboard side; we may have been turned around after the collision and he came up on the port side, but I don't think he was.

Q. If the steamer was heading in when you came up alongside of her, then you came up on the starboard side?

A. Yes, sir; I am sure of that.

Q. You are just as sure of that as you are of the other things you have testified to, are you?

A. Yes, sir.

Q. There was some conversation between the men in the boat and the engineer before you got out of the boat, wasn't there?

A. Yes, sir.

Q. And you had some further conversation after you got on deck about how the engines were, did you not?

A. No, not aboard the steamer.

Q. Didn't you say there was some conversation after you got on deck of the steamer?

A. No.

Q. Didn't you so testify?

A. Yes, but nothing about how we were going; not before we came on the Staten Island ferry-boat.

Q. Didn't you hear anything said about how the engines on the tugboat were going until you got on the ferry-boat?

A. No, I did not.

Q. Who else was in the boat besides you and the fireman?

A. The cook.

Q. You heard the engineer say that he sent these men aft to put off the lines?

A. No, I didn't hear him say that before we came on the ferry-boat.

Q. You say he told you that the engines were going ahead slow?

A. Yes, he did.

Q. When did he say they were going ahead slow, before the collision or at the time of the collision?

A. At the time of the collision.

Q. Didn't you hear him say that he was going to open her out as soon as this line was cast off?

A. He says he intended to do it.

20 Q. And that the trouble was they hadn't cast the line off; didn't you hear him say if they had cast the line off there wouldn't have been any collision?

A. No, sir, I didn't hear him say it.

Q. Didn't he say that to you on the ferry-boat?

A. He didn't say there would be no collision; he might have avoided a collision.

Q. If they had cast off the rope as he told them to?

A. Yes.

Mr. Putnam reads deposition of GEORGE H. BERRY, taken on behalf of the libellant, as follows:

Q. You are a Sandy Hook pilot, and have been how many years?

A. Thirty-three.

Q. You are and were connected at the time of this collision with what boat?

A. The Edmund Driggs, No. 7, New York; I was steering at the time.

Q. You were bound out to the station that day?

A. We were the station-boat, yes, sir; we drifted in and we were bound out to our station.

Q. Where were you when you were taken in tow by the tug Talisman?

A. By the inward buoy; there are three red lights and three white lights 2,000 feet apart; that would make it 4,000 feet to the outer buoy, and we were by the inward red buoy; they are lighted at night.

Q. Were you anchored?

A. Yes, sir.

Q. What had brought you inside?

A. I was trying to tow a bark and I couldn't cut her out, and winding around and getting out again the wind suddenly died out and left me. I made sail and found I was losing ground and let go and anchored.

Q. When the tug Talisman came out you hailed him, and asked him to let go a line?

A. I had my flag at half mast; he had passed me.

Q. Did you take the tug's line, or did you give him your line?

A. They took my line.

Q. The line from the pilot-boat?

A. The line from the pilot-boat.

Q. How much line did you pay out?

21 A. I suppose about 20 fathom; allowing 5 fathom to make fast—about 15 fathom apart.

Q. About 20 fathom paid out from your boat?

A. From my boat.

Q. Which way did you go after you crossed the bar?

A. We never got across the bar; that is where we struck.

Q. What course did you go?

A. We were steering about southeast by south, or south-southeast, crossing the channel.

Q. For what buoy would that head you?
A. That would head us a little outside of the outer black buoy.
Q. Did you see the Delaware?
A. I saw her an hour before she hit us.
Q. Did you see her before you were in tow?
A. Yes, sir; way off the light-ship.
Q. When you first took the tow how far off was she then?
A. She must have been two miles off.
Q. Was she heading then right in for the channel?
A. Right in for the channel.
Q. What would you judge her course was?
A. I should judge she was heading about west by north, or west by north, half north, coming in right for the buoy.
Q. How fast would you judge was the Talisman towing the pilot-boat?
A. I should judge about five knots.
Q. How fast would you judge the steamer was coming?
A. All of nine or ten knots; she had a tide with her; I don't know how fast the ship is.
Q. Did you see any change of course by the steamer?
A. I saw none until just before the collision, when, I think she starboarded her helm.
Q. Did you notice any change in the course of the tugboat?
A. No, sir; not until the time she was about hitting her; before that she was towing right direct. He may have ported her, but I didn't notice it.
Q. Did you keep right direct after the tugboat?
A. Yes.
22 Q. Did you hear any whistles?
A. I heard no whistles up to about the time they were colliding, and then I couldn't tell, but not before.
Q. Did you hear the tug blow any whistles?
A. I heard her blow twice two successive blasts—separate, one at a time.
Q. When the tug first blew one whistle, how far off do you think the steamer was then?
A. I should judge she was a mile.
Q. You heard no answer from the steamer?
A. I heard no answer; I was looking at her; I couldn't see the steam or hear any answer.
Q. Did you hear the Talisman blow a whistle again?
A. Just a little while after.
Q. It blew one whistle again?
A. It blew one whistle again.
Q. How far off do you think the Talisman was at that time?
A. I suppose about an eighth or a quarter of a mile.
Q. There was no difficulty in hearing signals at that distance?
A. No.
Q. Was there any wind to interfere?
A. No wind at all.
Q. Was the whistle a loud one?

A. The Talisman has a good whistle.

Q. When did you first think there would be a collision?

A. When she was getting about three times her length from us; we had three pilots aboard; I called their attention down below; I says: "There's going to be trouble." Those three men came on deck; they had seen nothing before that; they had seen her outside, they were getting their breakfast.

Q. Before that and while you were steering was there anybody else on deck of the pilot-boat?

A. No one but the crew; the pilots were eating and smoking down below; they didn't belong to the boat, they were men I had taken out of outward-bound vessels—up to a few minutes before the collision—they came on deck and witnessed the collision.

Q. Whereabouts did the collision actually occur in the
23 channel?

A. I should judge the collision actually occurred about the centre of the channel.

Q. How wide is the channel at that point?

A. 1,100 feet.

Q. How much water is there where the collision took place?

A. There is supposed to be 27 feet at low water.

Q. Would there have been any difficulty for the steamer to have ported her wheel and gone under the stern of the tug and tow?

A. She could have gone around the buoys anywhere within half a mile.

Q. How much water is there to the north of the buoys?

A. 22, 23 and 24 feet.

Q. How was the tide at the time?

A. The tide was going north, the last of the flood.

Q. It was high water then, nearly?

A. It would be high water about 11 or half past.

Q. When you say 27 feet in the channel, do you mean at high water or at low water?

A. At low water and more.

Q. How much does the tide run?

A. The average rise and fall of the tide in New York harbor is 4½ feet.

Q. Before the collision, or when you called the men up from below, did you notice anything about the speed of the tugboat, whether she changed her speed in any way?

A. No, I didn't notice any difference.

Q. How was your hawser at the time of the collision, did you notice?

A. I think our hawser was taut.

Q. You lowered a yawl and picked up some of the crew, didn't you?

A. We had one out and I hove out another one; we picked up three—those that came on the starboard side—she cut her in two on the starboard side.

Q. How far is the distance from the place where you were an-

chored and the tug took you in tow to the station where you would regularly cast off the tug?

A. About 4,500 to 5,000 feet.

Q. Not quite a mile, then?

A. No, sir.

Q. How long do you think you were in towing up to the time of the collision?

A. I have no idea of the time; I would not want to venture on that.

24 Q. What time do you think the collision occurred?

A. Around ten o'clock.

Q. About what time were you taken in tow?

A. We wasn't in tow 15 minutes at the very most; he went slow to get our anchor up.

Q. At the time that these whistles were blown to the steamer, was he going faster than 4 or 5 knots?

A. No, sir; I don't think she was; about 5 knots, I suppose.

Q. Could you see any reason as a Sandy Hook pilot why the steamer couldn't keep out of the way of the tugboat?

A. No, she could port her helm or stop; there was plenty of room between our stern and the buoys if she wanted to keep in the channel, there was 27 feet; she could have gone between our stern and the red buoy or she could have gone to the north of the buoy; there is good channel.

Q. She had about a half mile of water to navigate in, did she?

A. Yes.

Cross-examination read by Mr. KIRLIN:

Q. You say you were anchored above the line of red buoys?

A. To the northward and eastward of the inner red buoy.

Q. How far off from it?

A. I guess we were 200 feet from the red buoy; to the northward of the red buoy.

Q. Where was the Talisman when she turned around to come back and get you in tow?

A. In Gedney's channel; I had sent my yawl to an oil tank to take the pilot out and it looked like a very heavy squall and the Talisman went and took that man and came back over to me, and then is when I hailed him to give me a tow; he went out the channel and came back.

Q. Where was the oil tank that the Talisman went to?

A. About the second red buoy; the pilot left her there.

Q. In the center of the channel?

A. In the center of the channel.

Q. The Talisman went and got that man and went back to your boat?

—. Yes, sir; and took me in tow.

25 Q. When he took you in tow where did he go, into the channel or along about the upper buoy?

A. He went right straight a bee line, between the first and second red buoy, right straight line.

Q. You were between the second and third when he picked you up?

A. We were abreast of the third.

Q. You kept above the second red buoy and started across?

A. We kept the second red buoy on the starboard hand crossing the channel.

Q. You crossed between the first and second buoys?

A. First and second red buoys.

Q. Then you must have made somewhat of a turn in rounding that and going across, didn't you?

A. No, not exactly; it is pretty straight.

Q. Southeast by south or south-southeast from the third red buoy wouldn't bring you to the place of collision, would it?

A. No, sir; not from that buoy, it wouldn't; to the northward would.

Q. You must have gone more easterly for awhile?

A. No, more northerly; that would bring you to the right of the channel; the channel runs west by north, three-fourths north; easterly would be going out again.

Q. You must have kept a northerly course?

A. Northerly and easterly course; the tide carried us that way.

Q. About parallel with the buoys until you got to the red buoy No. 2, and then turned?

A. Yes.

Q. What you meant to say was you were on a course southeast by south or south-southeast at the time of the collision?

A. About the time of the collision.

Q. You hadn't been in the channel very long before?

A. No.

Q. You had been above it and had been across it and were about the center of it at the time of the collision?

A. At the time of the collision when the tugboat, I suppose, was a little over the centre.

Q. And you were a little to the northward of the centre still?

A. Northward and eastward; we had the line of the red buoys open to our stern; the vessel could have passed between our stern and the red buoys.

26 Q. When you got out to the second red buoy and the tugboat changed her course to cross the channel how far off was the steamer?

A. I don't know that she did change her course; this south-southeast would carry me right across the channel.

Q. I understood you to say a moment ago that after taking you in tow he went out northward, or in a course northerly and easterly, and about parallel with the red buoys until you came to buoy No. 2, and then went across?

A. No; we made very nearly a straight bee line between No. 1 and 2.

Q. Coming back to the question I asked a little while ago,

whether a course south-southeast or southeast by south from where you were anchored would bring you to the place of the collision without any change of course?

A. Yes, sir, it would; very near it, anyway.

Q. How far is it from the second to the third red buoy?

A. 2,000 feet.

Q. And from the first to the second, the same distance?

A. Yes, sir; 2,000 feet apart; 1,100 feet across the channel.

Q. And you were about 600 or 650 feet to the southward of the line of the red buoys at the time of the collision?

A. Yes.

Q. Nearest to which one were you? Nearest to 1 or 2?

A. We were about half way between the two; perhaps nearer to No. 1; No. 1 would be under my stern; I would be crossing the channel.

Q. The wreck of the Talisman has been buoyed, has it not?

A. Yes, sir.

Q. The wreck is lying very near, if not quite in the southerly edge of the channel?

A. I should judge about 100 feet from the range of the black buoy; that is where the buoy is.

Q. If they struck about the middle of the channel and the Talisman sunk in a flood tide way down by the south edge of the channel, that would seem to indicate that the course of the vessel, instead of being west by north must have been something southward of west?

27 A. The pilot told me himself he was heading west when he struck her—the pilot of the Delaware—he was forced to cross her.

Q. Didn't he tell you that he had come in a little too far to the north and west pointing somewhat to the southward to get in between the buoys?

A. No, sir; he never spoke to me.

Q. He never spoke to you at all?

A. I says, "Fred., how was your head?" He says, "About west." Says I, "Why didn't you go under my stern? Why didn't you answer our whistles?" He says, "I never heard any whistles."

Q. Do you mean to say there was no wind blowing just before the collision?

A. No, sir; calm; there had been a rain squall and killed all the wind; if there had been any wind I wouldn't have had the tugboat.

Q. The atmosphere was pretty thick?

A. At times, though, you could see two or three miles.

Q. Did the tugboat lie alongside of your pilot-boat some little time before he got under way?

A. No, sir; we gave him a line right away as soon as he came to us.

Q. Which way did he point when he started with the line?

A. He pointed down towards our station; down towards the first and second red buoy, as near as I can remember.

Q. Didn't you say you were some little time getting up the anchor?

A. I suppose a few minutes; we didn't have much out; three or four fathoms.

Q. This collision occurred about 3,000 or 3,500 feet from where he took you in tow?

A. I guess all of that; more than that, probably.

Q. About 4,000 feet?

A. Yes, sir.

Q. Nearer the outer red buoy?

A. Between the red and black buoy.

Q. How long do you think he was towing you those 4,000 feet?

A. I couldn't figure on that at all; I have got no idea; I am not a very good calculator on time.

Q. It would be a good deal less than fifteen minutes, wouldn't it?

A. I am not an expert on that.

Q. It is less than a mile. You don't think he was fifteen minutes towing you 4,000 feet, do you?

28 A. Time will pass away very rapidly, especially when you are looking after the crew; time will pass away very rapidly I couldn't figure on the time at all.

Q. Can't you look back on the situation now and judging the distance that he towed you from the time he picked you up until the collision, say whether or not it was fifteen minutes from the time you started until you collided?

A. I have got no idea of time.

Q. Don't you think it was less than fifteen minutes, a good deal?

A. I know we went very slow until we got our anchor up, and he went a little faster after our anchor was up. Time passes very rapidly sometimes. I had no watch and the men was down in the cabin. The steamers was all coming down; I was anxious to get down and take the men out. There was a Cunarder out there; our yawl was capsized; two men got capsized after all this happened.

Q. I am trying to get you to say how long you think it was during which he was towing you those 4,000 feet?

A. It wasn't a great deal of time; it may be from ten to fifteen minutes, but still I wouldn't be certain of it.

Q. You know pretty well how fast a tugboat of that size tows a pilot-boat, don't you?

A. Yes; to go full speed; but I don't think he was going full speed.

Q. Don't you think under ordinary circumstances you would tow 4,000 feet in less than ten minutes?

A. Yes; could do it; that is at the rate of six miles an hour; that is, a tugboat could do that easily enough.

Q. Don't you think now on further consideration that it was less than ten minutes from the time you got under way to the time of collision?

A. No, I don't think it was less, because we went very slow until

we got our anchor above water; and after we got our anchor we went a little faster.

Q. Did anybody call out to your boat to throw off the towline before the collision?

A. No; I sung out to our own crew to heave it off, or to cut it.

Q. Where was the steamer with reference to the outer red buoy when the tugboat blew the last whistle?

29 A. She was steering in for the red and black buoy, pointing about the centre of them, I should judge.

Q. Wasn't she coming in a little above the line of the channel?

A. Yes; I think she was, because she was steering a little more of a southerly course.

Q. When the tug blew the second long blast that you have testified to, wasn't the steamer pretty close in to the red buoy; just to the southward of the line of it?

A. Yes, sir.

Q. Are you quite certain that the steamer answered that last, second blast from the tug?

A. No, sir; I didn't hear it at all.

By Mr. PUTMAN:

Q. You said that you had a conversation with the pilot of the steamer; when and where was that question and answer that you had with him?

A. In our office; the pilot office.

Q. After the collision?

A. The first time I had met him.

By Mr. KIRLIN:

Q. What is his name?

A. Harpenau.

By Mr. PUTNAM:

Q. Is he a Frenchman?

A. No; I think he is a German.

By Mr. KIRLIN:

Q. Was the course that you were steering going to take you above or below the outer black buoy?

A. To the eastward of it.

By Mr. PUTNAM:

Q. The course that you were steering would take you about how near to the first black buoy if you did not change and there had been no collision?

A. It would take me three to four hundred feet to the eastward of it.

Q. At the time it cleared up did it stop raining?

A. It stopped raining, yes, sir; it was kind of drizzly but the rain was stopped.

Q. When it cleared up whereabouts was the tug?

A. When it cleared up the tug was about a quarter of a mile northwest or north-northwest of buoy No. 2.

Q. By buoy No. 2 do you mean the red buoy?

A. Yes, sir, the can buoy at the entrance of the channel. I noticed the can buoy more than I would the spar buoys.

By the COURT:

Q. That is the middle red buoy?

A. No, sir, the entrance buoy, the outer buoy; there is no can buoy except the outer buoy or guide-buoy.

By Mr. PUTNAM:

Q. What course did you steer when it cleared up and you could see objects at that time?

A. Headed about south-southeast by the compass for black buoy No. 1 where I was bound.

Q. Did you have the black buoy No. 1 ahead of you or on one bow?

A. Little on the port bow.

Q. Do you know how your compass compared with the true magnetic course there?

33 A. Yes, sir; it was half a point or about that westerly deviation, half or three-quarters westerly deviation when on that course.

Q. What would be the true maghetic course you would be steering?

A. The true magnetic course would be about southeast by south or southeast by south one-quarter south when I was steering with the buoy a little on my port bow.

Q. Had you seen this steamer then?

A. I saw the steamer; it had all cleared up and I was on my course to the eastward.

Q. At the time you saw the steamer had you got to the channel?

A. No, sir.

Q. You were still a little to the northward?

A. I was very near a quarter of a mile away from buoy No. 2, that was the nearest prominent object to me.

Q. When you first saw the steamer were you steering the course you say?

A. I was steering the course for the black buoy.

Q. For the black buoy a little on the port bow?

A. For the black buoy a little on the port bow.

Q. How far off was the steamer when you first saw her?

A. I should say a mile and a quarter.

Q. And in what direction was she?

A. About east of us, I should say. I didn't take her bearings by compass, she was on my port beam.

Q. How was the steamer heading when you first saw her?

A. Little to the southward of west; I could just see on her port side, her smokestack and mast were just open.

Q. Were just open on the port side?

A. Were just open so I could see on her port side.

Q. The steamer's port side?

A. Yes, sir.

Q. What did you do then?

A. I blowed one long whistle.

Q. How soon was that after you first saw her?

A. I couldn't say; I suppose within a minute or thirty seconds.

Q. How far off do you think the steamer was when you blew that first whistle?

A. A mile and a quarter off I should judge.

34 Q. Was it foggy or thick at that time?

A. No, sir; clear.

Q. What kind of a whistle does the Talisman have?

A. First-class whistle, 90 pounds of steam behind her.

Q. Did you get any answer to that whistle?

A. I didn't see no smoke; I couldn't swear I got an answer, but I was under the impression he answered, whether I got an echo from it I don't know.

Q. But you didn't see any steam?

A. No, sir; I couldn't swear the steamer blowed, but I was under the impression when I got the libel out that she did answer my first whistle.

Q. Did you change your course?

A. No, sir; kept right on.

Q. Did you see any change of course of the steamer?

A. Not at that time, no, sir.

Q. How soon did you blow any other whistle?

A. I blowed another whistle about five minutes after, just as I was passing No. 2, it was just abaft my beam when I blowed the second whistle.

Q. That is you were then in the channel?

A. I was then.

Q. Was the steamer heading about the same way?

A. She was heading almost right at us, everything was in a line, she was heading right at us.

Q. Did you get an answer to that whistle?

A. I don't think she answered any amount so I heard any whistle; my men all say she answered but I can't say I remember hearing her answer any.

Q. How was the weather as to being thick when you blew the second whistle?

A. It had cleared off; you could see all the ranges, everything was in sight—Staten island, Highlands, and everything was all plain in sight.

Q. How near do you think the steamer was to you when you blew the second blast?

A. About a quarter of a mile from me, I should say, that is as near as I could judge.

Q. How was she bearing from you then as to what part of her you could see?

A. On my port beam.

35 Q. Were you still steering the same course?

A. Still steering the same course, the black buoy a little on my port bow; I altered only what the tide swept me off.

Q. The tide was a little stronger at midchannel?

A. It was than where I took hold of the boat.

Q. What was the next thing that happened after you blew the second blast of your whistle?

A. I suppose it was a minute after that I saw the steamer suddenly commence to swing to port, all of her port side was in sight of me then and all the thing I could do then was I tooted two or three short blasts of my whistle for them to let go the line aft.

Q. How far off was the steamer when you thought she swung to port?

A. When I blowed to let go?

Q. When you first noticed her swinging off to port.

A. I couldn't tell that; probably an eighth of a mile off; she was close, too; there was white water under her bow pretty hard.

Q. You blew a few short blasts then to let go the line?

A. To let go the line.

Q. Did you sing out to anybody to let go the line?

A. The men came running out; two out of the port kitchen door, the cook first; and I supposed they were going aft to let it go; they didn't seem to let it go and I was afraid the line was jammed and I signalled down to the engineer—hailed him through the speaking tube—to tell them to cut the line.

Q. Do you know whether the engineer was there at the time?

A. I don't know; I suppose he was attending to the line; there was no answer.

Q. How close was the steamer's bow to the tug when you spoke through the tube?

A. Very close; on top of us, then, a couple lengths maybe off us more or less; she was close on top of us and white water under her bow, coming fast.

Q. Did you ever see the engineer again before the collision?

A. Not until after; I was alone in the pilot-house.

Q. Were you there when the steamer struck?

A. I was there when the steamer struck and had hold of the wheel, unfortunately for me.

36 Q. Did they get the line cast off as far as you can say?

A. That I never can tell you; I don't know.

Q. You had your hand on the wheel at the time?

A. I must have had my hand on the wheel.

Q. What was the effect of the collision on your arm; your arm was broken, wasn't it?

A. She set the wheel over like lightning to the starboard; when the ship struck the wheel went to starboard and some of the spokes

catched my arm, how I don't know; I must have had hold of the wheel; I suppose I was going to put it to starboard: I would have if I could have cut the line.

Q. What part of the tugboat did the steamer hit?

A. About fifteen feet forward of the stern post.

Q. Did she begin to sink?

A. Before they could get a line—I got a line on the bow—it went down; the stern went down, but the bow stuck up.

Q. From what part of her did you get off on the steamer?

A. I got off about amidships on the bow of the boat.

Q. They got a rope to you?

A. On the bow of the lifeboat; some one passed a line off the steamer's bow.

Q. How did you get into it with your arm broken?

A. I got a bowline into it; whether some one helped me I can't tell; I did that with one arm, all I had to work with.

Q. At the time you got on the steamer was the tugboat above water?

A. Her bow was up a little ways; her stern was under water before they got me half way up.

Q. What part of Gedney's channel was it the collision occurred in?

A. She was about four hundred feet north-northwest of No. 1 buoy when she was struck.

Q. That is the Talisman?

A. I was looking right at the buoy, and I judged it was from 300 to 400 feet southeast of her.

Q. Did you make any change of course before the collision?

A. I think the boat's head swung a little more to the eastward, caused by the pilot-boat being on her starboard some and a short line.

37 Q. Did you ring any bells to the engine-room?

A. Yes, sir; one bell after I tooted the whistle; I hollered for them to let go the line, and I rang the bell to bring him there.

Q. Do you know whether you rang the bell before or after you spoke down the tube?

A. I spoke down the tube first, and rang the bell to bring him there when I got no answer.

Q. Did you get any answer to that bell?

A. I did not.

Q. That was after you saw the steamer was going to strike?

A. After I saw she was going between us and hit one of the two.

Q. If the line was cast off what did you expect to do?

A. If the line had been cast off in three seconds more the steamer would went between me and my tow.

Q. Did you hear any whistles from the steamer after you blew the first blasts?

A. No, sir; but such short quarters she might blow a hundred and I wouldn't hear them. I heard them hailing "hard-a-port;" whether they were hailing to the pilot-boat or not I don't know, but I suppose to the pilot-boat.

Q. Did you look back at all to the pilot-boat before the collision?
—. At that time, no, sir.
Q. There was one of your crew lost, was there?
A. Yes, sir.
Q. Who was that?
A. One of the firemen; I don't know his name; he had only been there ten days.
Q. Did you see him before the collision?
A. I did not. I saw him when we took hold of the pilot-boat, but I didn't see him after that, to my knowledge.
Q. How many years have you had experience at sea?
A. I commenced in 1849.
Q. Did you ever serve your time on a pilot-boat?
A. Yes, sir; served first six or seven years of my going to sea on a New York pilot-boat.
Q. Have you ever been captain of steam vessels, ocean-going steamers?
A. Yes, sir.
Q. How many years?
A. The last twenty years; coasting steamers.
38 Q. Were you ever in the employ of the Reading Company?
A. In the employ of the Reading Company for six years.
Q. Since you were in command of the Talisman have you been in any Government employ?
A. In the anchorage business when I first started out.
Q. That is to look after the anchorage limits in New York bay?
A. To look after the anchorage limits in New York bay and harbor.
Q. How long were you in that employ?
A. Little over two months.
Q. Under what department of the Government?
A. Under the Naval Department. I lost it when they put it under control of the revenue department, but my boat was in it for three months after that.
Q. You are familiar with the soundings and the water around Gedney's channel?
A. Yes, sir.
Q. Take a steamer drawing eighteen feet, was there plenty of room for her to come in astern of you and your tow there?
A. Yes, sir; drawing thirty feet.
Q. Was there room for her even to the north of the buoy?
A. Yes, sir; if she drawed 24 feet she couldn't found no bottom anywhere to the north of all the red buoys, between that and the tail of the Roner buoy.
Q. Supposing the Delaware had not starboarded her wheel, but had kept the same course she was on, would there have been any collision?
A. She would went right close under the pilot-boat's stern; that is supposition.

Q. And gone clear? Did you see anything to require them to starboard there?

A. I did not; no, sir.

Counsel for libelant here offers in evidence the following:

"*Notice to Mariners.*

"TOMPKINSVILLE, N. Y., *Sept.* 18.

"A black spar buoy, without number, has been placed in 30 feet of water in Gedney channel, New York lower bay, to mark the wreck of the sunken tugboat Talisman. The wreck lies between Nos. 1 and 3 buoys, 160 feet N. N. E. of the line of the black buoys.
39 It should be left to the southward. At low water there is only 12 feet of water directly over the wreck. Magnetic bearings, main lighthouse, Sandy Hook, S. W. by W. ½ W. Centennial tower, N. ¼ W.

"By order of the light-house board.

"W. S. SCHLEY,
"*Captain U. S. N., Inspector.*"

Also offers in evidence the engineer's map of improvements of New York harbor, showing the chart of Gedney's channel, as surveyed July 13, 22, 1893. It is marked Libellants' Exhibit 1.

Cross-examined by counsel for claimants.

By Mr. KIRLIN:

Q. How far apart are the buoys on the upper line of the channel?

A. I should say they were about quarter of a mile distant from each other; I am not sure.

Q. And how far across the channel?

A. Little over 300 yards.

Q. And how far was the pilot-boat away from the inner red buoy?

A. How far was the pilot-boat away from the inner red buoy when she was anchored? That I couldn't tell you. I suppose she was a quarter of a mile off to the northward of the buoy, I didn't pay no particular attention to where she was anchored.

Q. You started from a quarter of a mile, we will say, to the northward of the inner red buoy, and when it cleared up you found yourself——

A. She was half a mile from the inner red buoy I suppose; the second to be about a quarter mile from the line of those buoys, and about half way between the inner and the middle red buoy.

Q. About quarter of a mile above the line.

A. Yes.

Q. You started from there with weather thick, and you couldn't see any buoys?

A. We couldn't see any buoys when we started.

Q. How far to the line of the red buoys did you find yourself when the weather cleared up?

A. I should suppose, as near as I can judge, about quarter of a mile from No. 2 when it cleared up.

40 Q. No. 2 bearing how?

A. Probably southeast by south from me.

Q. I mean from your bow?

A. I mean from my bow, about southeast by south.

Q. How many points on your bow?

A. Little on the port bow when I made it; about half a point.

Q. At that time you saw the steamer, did you?

A. No, sir; I was heading off for the black buoy, when I saw the steamer—when I whistled for the steamer. Whether I saw her then I don't remember.

Q. You haven't quite answered the question. I asked, how far you were to the northward of the line of the red buoys, when it cleared up so you saw the outer red buoy No. 2?

A. How far I was from a line drawn from them?

Q. Yes, along them.

A. About an eighth of a mile; quarter of a mile away from No. 2.

Q. Did you see No. 4 at the same time?

A. I didn't pay no attention to anything on my starboard beam; I must have seen them, but I didn't pay any attention; too far away.

Q. Had you got below the line of the red buoys before you saw the steamer?

A. How do you mean?

Q. To the southward of it?

A. Oh, no, sir.

Q. You were still to the northward of the line?

A. I was an eighth of a mile to the northward, when I blowed the whistle to the steamer first.

Q. The steamer was heading for the channel?

A. The steamer was headed about west, half south I should say; about for the red buoy, I should judge she was heading.

Q. You continued on your course, and she continued on hers?

A. Yes, sir.

Q. When was it you first noticed the steamer begin to change her course?

A. A minute after; I blowed the second whistle, before I noticed any change.

Q. Where were you at that time?

A. I suppose I was 100 yards to the southward and westward of buoy No. 2, when she commenced radically to change her course, that I noticed, to the southward and westward.

41 Q. Up to that time, she had been still heading for No. 2?

A. I didn't notice any change; if she had I didn't notice it.

Q. When you got there, the steamer still continuing to head for No. 2, how did she bear from you?

A. Off on our port beam, little forward of our port beam.

Q. She was bearing for about the same place she had been all the time?

A. Yes, sir; I suppose so.

Q. You blew one whistle?

A. I blew one whistle.

Q. Your second signal?

A. My second signal.

Q. How far off was she then?

A. I should say a quarter of a mile, as near as I could judge.

Q. What change did you notice on her part, in the steamer's course?

A. I didn't notice she made any change; I never noticed any radical change in the steamer's course until a minute or so before the collision she commenced swinging rapidly to port, her head.

Q. Exposing her starboard side to your view?

A. Her whole port side was in view to me when she commenced to swing.

Q. Then she showed her starboard side?

A. No, sir; I never saw her starboard side after that, nothing but her port side was in sight to me.

Q. So far as you observed there was no change on the part of the steamer until about one minute before they came together?

A. No radical change, no, sir.

Q. Do you say the collision occurred to the eastward of a line drawn from No. 1 and No. 2, to No. 2 buoy?

A. No, sir; to the westward of a line drawn between them and the channel.

Q. What I want to get at is, how far were you in the channel when you blew the second whistle to the steamer?

A. Just passing No. 2; it was right abeam of me.

Q. You were right on the edge of the channel then?

A. Yes, sir.

Q. How far had you got into the channel when you noticed the steamer begin to swing?

A. I suppose I was from 300 feet—300 or 400 feet by No.
42 2. My pilot-boat's stern must been pretty well clear of her, the one I was towing.

Q. Then it was you noticed the steamer began to swing?

A. Yes, sir.

By the COURT:

Q. If she hadn't swung you think she would have cleared the stern of the pilot-boat?

A. That is only an opinion. I didn't dream there was going to be a collision; I supposed she was going up between the two of us until the last minute; I wanted to cut the line away. How she could swing up and hit my vessel I never have been able to find out.

Q. How far was it from your stern to the pilot-boat's bow?

A. I don't think over 15 fathoms. They said they give me 20

fathom of line. I am of the opinion they didn't give me but 15, but I can't swear to that.

By Mr. KIRLIN:

Q. That would be 90 feet; it would be a pretty close shave?

A. When she went luffing. If I could cut the line she could have gone between the two, in three seconds I could got that 15 feet away from her and all she could hit me was a glancing blow.

Q. The steamer was pretty near stopped at the time of the collision, wasn't she?

A. She was stopped far enough so when she went into the five feet of my boat she hit the steering rod and pulled the wheel over; she went through the keel and keelson and brought up on the boat's shaft.

Q. Mr. Flannery, the engineer, who stood right by the place where she struck said it went in about four feet.

A. She had to go five before she could hit the rod to hit my arm. When I went out on the deck to cut my lifeboat adrift the ship's stem was cutting the after end of my lifeboat in two, getting into the air chamber. Where the towboat was—the tugboat laid over to an angle of twenty degrees; and if the ship's stem was all the way through the lifeboat, down below, it must be between the keel and keelson.

43 Q. If she had been going very fast she would have gone right on over you, wouldn't she?

A. She was going very fast up to the time she fetched on our shaft, and then our boat went sideways for about 300 feet or more, because when I went out of the pilot-house the boat's starboard rail, the water was rushing over it; the moment the ship struck us our engine was reversed.

Q. After she carried you about 300 feet, as you say, she was at full stop?

A. Then the ship stopped.

Q. She was then at a full stop?

A. Yes; before I got over the ship's bow my boat's stern was on the bottom.

Q. Were you steering by the compass all the time from the time you took the Driggs in tow until the collision?

A. I was not; I was steering by the buoy.

Q. You had shifted your wheel somewhat, hadn't you, during the towage?

A. I might a spoke or two.

Q. You moved over towards the south?

A. I steered by the compass for the first five or seven minutes altogether, or eight or nine minutes, probably.

Q. When you made the outer can buoy on your port bow, didn't you port your helm?

A. No, sir; I was right on my course I wanted to be—heading south-southeast by the compass, and by the time it cleared off so that all the buoys were in sight I had the black buoy on my port bow and steered for that.

Q. Did you alter your helm after you blew the second blast to the steamer?

A. I don't think I did, no, sir.

Q. At what angle do you say the vessels came together?

A. As near a right angle as you could mark it. I had swung up little; I was heading magnetic southeast by south; I suppose I had swung up a little.

Q. How fast was your vessel going?

A. Through the water about four knot; over the bottom about three.

Q. How do you estimate that?

A. By our towing with a short line; we couldn't tow with a short line any faster than that. We was going less than half
44 speed, the orders to the engineer were less than half speed.

Q. How fast did the Delaware seem to be coming when you saw her first?

A. I can only estimate. Up to the time she struck us the white water was under her bow, what we call "bone in her teeth," was two feet high under her bow when she was 10 or 20 feet off us.

Q. How fast was she going then?

A. I suppose the ship is about a ten-knot ship; I have no idea, only an estimate.

Q. You say you gave a signal through the speaking tube and afterwards rang the bell to the engineer?

A. I rang the bell when I heard no one in the engine-room.

Q. What signal did you give?

A. One bell, the gong.

Q. When the steamer is under headway one bell means stop?

A. Yes, when he got there—he heard my voice—I would rather stop there than go any farther, I was afraid I was dragging the pilot-boat under the ship's bow.

Q. If he had been there he would execute that order?

A. No, sir; he would answer mine. I didn't want to stop, I wanted him to cut that line; I was afraid they wouldn't do that without orders.

Q. It was your intention simply to slow down, cut the line and go ahead?

A. Go ahead full speed the moment they cut the line, with the wheel hard-a-starboard.

Q. Did you put the wheel a-starboard at all?

A. I didn't; might have put it couple spokes a-starboard. I don't remember whether I did it or not.

Q. You heard a shout from the steamer to "hard-a-port"?

A. A shout from the steamer to hard-a-port, but who he was hollering for I don't know. It was no place for me to hard-a-port.

Q. You didn't hard-a-port?

A. No, sir, it was no place for me to.

Q. She was couple lengths off, wasn't she, then?

45 A. No, sir, not when the voice come to me, she was right on top of me; I calculated she was going to hit me right in the stern and I was afraid she was going to sink the tow.

Q. How long was the pilot-boat, in your estimation?

A. I think she was about 75 or 80 feet long: a small pilot-boat.

Q. You think they were about 300 or 400 feet to the northward of the southerly side of the channel at the time you were struck?

A. I think I was about 400 feet north-northwest where she hit me, between 300 and 400 feet north-northwest of buoy No. 1, just as near as I can judge it. I saw the buoy when we was hit, and I should judge it was not less than 300 and not over 400 feet southeast of me. Where she hit, she didn't go down far, she went down between the black buoys to be sure.

Q. She sank about on a line with the black buoys?

A. I think they said she went 100 feet to the northward of the line of the black buoy where she first sank.

THOMAS THOMAS, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. KIRLIN:

Q. Are you the master of the Delaware and the claimant in this cause?

A. Yes, sir.

Q. Who is the owner of the Delaware?

A. The Delaware Steamship Company.

Q. Is that an English corporation?

A. Yes, sir.

Q. How long have you been in command of the Delaware?

A. Since she was built, last June.

Q. How long have you been in the employ of the company?

A. Nearly five years.

Q. What other ships of theirs have you served in before you took command of the Delaware?

A. The steamer called the Manhattan.

Q. What position did you occupy on her?

A. From second officer *so* master.

46 Q. How long were you on the Manhattan?

A. Three years and a half.

Q. How many officers did you carry on the Delaware?

A. Three, four including myself.

Q. First, second, and third officers and yourself?

A. Yes, sir.

Q. And how large a crew?

A. Forty-two.

Q. What is the size of the Delaware?

A. 2,469 register.

Q. And what is her length?

A. 345 feet.

Q. And her beam?

A. 44.

Q. And what business is she in?

A. In the oil trade between here and Europe.

Q. What is her voyage, where does it begin and end?

A. The voyage begins the other side, London or Liverpool.
Q. From there where?
A. To New York and back.
Q. Comes over in ballast and gets a cargo of oil and goes back with that?
A. Yes, sir.
Q. She is a tank steamer, is she?
A. Yes, sir.
Q. On the morning in question did she have any cargo?
A. No, we had nothing in.
Q. Simply in ballast? What was your draft then?
A. Drawing 16 feet 6 aft and about 12 feet forward.
Q. Water ballast you had?
A. Yes, sir.
Q. In the tanks?
A. Yes, sir.
Q. What are the names of your three officers?
A. Mr. Anderson, Mr. Dowbiggin and Mr. Cracroft.
Q. That is the order of their rank is it?
A. Yes, sir.
Q. Are they all master mariners?
A. Yes.
Q. How long have you known them?
A. Since I have been in this ship; since the first voyage in this ship last June.
Q. Do you know anything of them outside of what you have learned in this ship?
A. Yes, I have heard very good reputations for the three of them.
Q. Where did they come from to the steamer?
A. One of them came from another ship called the Weehawken belonging to the same company, the other two were new hands in the company.
47 Q. Who came from the Weehawken?
A. Mr. Anderson, chief officer.
Q. Do you know how long he had been with the Weehawken?
A. About 18 months.
Q. Where did Mr. Cracroft come from?
A. He came from a sailing ship, was in command of a sailing ship.
Q. Where did Mr. Dowbiggin come to you from?
A. He came from the Hoar line, a Liverpool company.
Q. Were these all capable, reliable men as far as your judgment goes?
A. Yes, sir.
Q. Have you had any testimonials yourself from your company?
A. Oh, yes, good many.
Q. So that on the voyage in question you judge the vessel to be well manned and equipped, would you?
A. Yes.
Q. At what time on the morning of the 16th of September did you pass Sandy Hook light-vessel?

A. 9 o'clock a. m.

Q. At what time did the collision with the Talisman occur?

A. About four minutes past ten.

Q. Between nine and ten had you been on the bridge yourself?

A. Yes, sir; been on deck half an hour previous to this, to the collision.

Q. When you left the deck and went below where was the vessel with reference to the outer end of Gedney's channel and with reference to the light-ship?

A. The vessel would be about half way between Sandy Hook light-ship and Gedney channel, the entrance to Gedney's channel.

—. Before you left the bridge did you try the whistle?

A. Yes, sir.

Q. What did you do to it?

A. I pulled on the string to see it was all right and the whistle sounded.

Q. What time was that?

A. That was about half past nine.

By the COURT:

Q. What made you do that?

A. To see it was all right.

48 Q. What made you want to see it was all right?

A. We always do it.

Q. You always do it when?

A. Coming into port.

By Mr. KIRLIN:

Q. Did you find it all right?

A. Yes, sir.

Q. It made one blast, did it?

A. Yes.

Q. Any vessels in sight at that time?

A. I didn't see any.

Q. Then you went below?

A. Yes, sir.

Q. What were you doing?

A. I was getting my papers ready for coming on shore previous to entering Gedney's channel.

Q. Where are your rooms and the chart-room with reference to the bridge?

A. Right underneath.

Q. What is the first thing you come to going down from the bridge?

A. The chart-room.

Q. That is opposite——

A. Right underneath the bridge.

Q. On a level with what you call the lower bridge?

A. Yes.

Q. Where is your cabin?

A. Right underneath the chart-room, underneath that again.

Q. Is there an inside staircase?
A. Yes, sir.
Q. Why did you go below?
A. I went down to my room to get my papers.
Q. How long were you down?
A. About ten minutes.
Q. Then where did you go?
A. Then I was up in the chart-room for another ten minutes.
Q. What were you doing in the chart-room?
A. I was working up the total distance to Sandy Hook light-ship and the time we had taken on the voyage, and the average speed.
Q. Did you work those all out in the chart-room?
A. Yes, sir.
Q. And you made a record of them?
A. Yes, sir.
Q. Then what did you do?
A. Then I went up on the bridge.
Q. When you got up on the bridge what did you see?
49 A. The tug Talisman about two or three points on the starboard bow.
Q. Up to that time had there been any signal given of your whistle?
A. No, sir.
Q. Had you heard any whistle from any other vessel?
A. No, sir.
Q. You saw the Talisman bearing how?
A. About two or three points from the starboard bow.
Q. Did you notice the buoys?
A. I did not notice the buoys; no, sir.
Q. When you saw the Talisman what did you do?
A. Went up on the upper bridge and drew the pilot's attention to it; I also stopped and reversed the engine and ordered the helm put hard-a-starboard.

By the COURT:

Q. At the same moment you called the attention of the pilot?
A. Yes, sir.

By Mr. KIRLIN:

Q. You did that all at once, one order right after the other?
A. Yes, sir.
Q. What was the first order?
A. To stop and reverse the engine.
Q. And then the next one?
A. Hard-a-starboard the helm.

By the COURT:

Q. What did you say to the pilot?
A. I asked him if he could see the Talisman.
Q. No; what did you say; sing out what you said.

A. "Can you see that tugboat crossing our bow at right angles?" and the reply the pilot made was, "Stop the engines."

Q. And you did stop them?

A. We did stop them and reversed.

By Mr. KIRLIN:

Q. Is there a tell-tale coming back?

A. Oh, yes, yes.

Q. Did you look on that to see whether the order was executed?

A. Yes, sir.

Q. Did you see the wheel put over?

A. Yes, sir.

50 Q. How long after that was it before the collision occurred?

A. About a minute.

Q. How far off was the Talisman, do you think, when you gave these orders, how many of your ship's-length?

A. About couple ship's-length; might been little more or less; about couple ship's-length, I should judge.

Q. Did you do anything else on the bridge about that time?

A. Yes, I got up onto the rail and shouted out to the tug to port his helm.

Q. About a minute after that the vessels came together?

A. Yes, sir.

Q. Did you notice what part of the tugboat your vessel struck?

A. Yes; about the quarter, the port quarter.

Q. At what angle did the vessels come together?

A. About right angles.

Q. Did you notice any of the buoys at that time?

A. No, I wasn't paying any attention whatever to the buoys; I was watching the collision.

Q. How near stopped was your vessel at the time of the collision?

A. We stopped after she had gone her own length after the collision; about her own length; she was still heading the same way almost.

Q. Was she still into the tugboat?

A. Yes, sir.

Q. Up to the time she came to a dead stop?

A. Yes, sir.

Q. Then what did the tugboat do?

A. We went astern for three or four minutes and then the tugboat sank.

Q. What speed was your vessel making up to the time you went on the bridge?

A. About nine knots.

Q. Have you made any experiments to ascertain how long it takes you to stop still in the water by reversing your engines when the steamer is making 9 or 10 knots?

A. Yes.

Q. When did you make those experiments?

A. Two voyages ago—the voyage after that collision.

Q. Whereabouts?

A. On this side, taking a pilot on board.
Q. Out near the light-ship?
A. Yes.
51 Q. Did your engineer know what you were doing?
A. No, he didn't know anything about it; he knew we were taking a pilot on board.
Q. Tell us what you did.
A. We stopped the engines and reversed full speed astern, and all the way was off the ship in 1 minute 55 seconds.
Q. Previous to that she had been making what speed?
A. On this same date 10 or 11 knots.
Q. At the time you were on the deck what was the vessel's speed?
A. 10 or 11 knots.
Q. Was any signal blown on your vessel after the time you tried it when you were out, as you say, half way to the light-ship?
A. No, no signal whatever.
Q. Up to the time of the collision?
A. No, sir.
Q. Did you hear any whistle after you came on the bridge from the Talisman?
A. No, sir.

By the COURT:

Q. What started you from your room to go to the bridge?
A. Nothing; we were about entering Gedney's channel.

By Mr. KIRLIN:

Q. Did you notice the compass when you came on the bridge?
A. No, sir; I did not.
Q. Do you know what course you were on?
A. I know that; that we were heading for the entrance to Gedney's channel.
Q. Do you know about what your course was?
A. About west.
Q. What did you judge the course of the Talisman to be at the time you came on the bridge?
A. About south.
Q. Could you form any judgment as to the Talisman's speed?
A. No, sir; I could not.
Q. How far was the pilot-boat astern of the tugboat?
A. 15 or 20 fathom.
Q. Why didn't you port instead of starboarding when you came on the bridge?
A. We would run into the pilot-boat if we did that.
52 Q. Do you know how much your vessel swung off under hard-a-starboard helm?
A. About two or three points.
Q. Suppose the tugboat had hard-a-ported at the time you sung out to her, would there have been any collision in your judgment?

A. We would probably have cleared.
Q. You were then how far away from him do you say?
A. About couple ship's-length.
Q. Do you think, considering the distance between the stern of the Talisman and the bow of the pilot-boat, that there was any possibilty of your having gotten through between the two?
A. No, it was hardly possible.
Q. Had you at any time seen or heard of the presence of the Talisman in those waters before you came on the bridge about a minute before the collision?
A. Oh, no, sir.
Q. Who was on the bridge when you came on?
A. The pilot and third officer.
Q. Where was the wheelsman?
A. He was also on the bridge inside of the wheel-house.
Q. You had a lookout, did you?
A. Yes.

By the COURT:

Q. Where do you get onto the bridge, come up onto the bridge, which side from your room?
A. I came up on this occasion on the starboard side.
Q. From your room?
A. Yes, sir.
Q. Where did the pilot stand?
A. On the starboard side of the bridge.
Q. So he was right there at the head of the stairs as you came up?
A. Yes; he was on the upper bridge.
Q. Didn't you come up to the upper bridge?
A. Yes.
Q. When you came up to the upper bridge you came up right where he stood?
A. Yes.
Q. That is when you spoke to him?
A. Yes, your honor.

By Mr. KIRLIN:

Q. The third office was where?
A. Standing by the telegraph close to him on the upper bridge.
53 Q. On which side?
A. Starboard side.

By the COURT:

Q. Had you got on the bridge before you spoke to him, or did you speak to him as quick as your head came up there?
A. I spoke to him after I got up on the bridge.
Q. As soon as you got on the bridge?
A. Yes.

By Mr. KIRLIN:

Q. Were they looking at the Talisman when you came up?
A. I don't know. I drew the pilot's attention to the Talisman when I went up on the bridge. I supposed he could see her when I went on the bridge.
Q. He could hardly help seeing her at that distance, could he?

The COURT: If he looked of course he saw her.

A. Yes, sir.
Q. Do you know who was on the lookout?
A. Yes, sir.
Q. Who was it?
A. Underwood, able seaman.
Q. What sort of seaman was he?
A. Very good seaman, able-bodied seaman.
Q. Who was at the wheel?
A. Peyton, quartermaster.
Q. Was he a good man?
A. Yes, sir.
Q. What has become of Peyton?
A. He has left to go third officer of a ship.

Cross-examined by counsel for libelants.

By Mr. PUTNAM:

Q. You had a master's certificate, of course?
A. Yes.
Q. Had Peyton a master's certificate?
A. No, sir.
Q. He had chief officer's certificate?
A. No, sir.
Q. What did he have?
A. He had no certificate.
Q. Who was the officer on the bridge?
A. Mr. Cracroft, third officer.
Q. What certificate did he have?
A. Master's.

Q. Have you stated all the words that passed between you
54 and the pilot when you came up on the upper bridge before the collision?

A. It was words to the effect what I said just now.
Q. You have stated them all, have you?
A. Yes, sir; as near as I can remember.
Q. The pilot told you to stop, did he?
A. Yes, sir.
Q. Are you sure that the pilot said that to you, or didn't he say it to the man who was at the telegraph?
A. I am not quite sure whether to me or to Mr. Cracroft, the third officer.
Q. Who actually worked the telegraph?

A. The third officer the first time, and me that worked the second time reversing.

Q. The first order to the telegraph was "stop"?

A. Yes, sir.

Q. That is putting the handle up to the top of the telegraph?

A. Yes.

Q. That the third officer did?

A. Yes, sir.

Q. You gave the order to the quartermaster, didn't you, to the wheelsman?

A. Yes, sir.

Q. "Hard-a-starboard?"

A. Yes, sir.

Q. Were you steering by steam?

A. Yes, sir.

Q. Did you see it put hard over?

A. The third officer saw it put hard over.

Q. You didn't go to it yourself?

A. No, sir; not at the time.

Q. What time was it that you went again to the telegraph and gave some other order?

A. It wasn't two seconds difference in the time, from the time we put the telegraph on "stop" and "full speed astern," the third officer just let the handle go before I got hold of it.

Q. When the third officer went away from the telegraph where did he go?

A. To see the helm put over hard-a-starboard.

Q. Did he take hold of it, do you know?

A. Yes, sir.

Q. Took hold of the steering wheel?

A. Oh, no, sir, no sir, the main steering was inside of the wheel-house; he never went inside of the wheel-house.

Q. Did anybody tell him to leave the telegraph and go to the wheel-house to see the helm put over?

55 A. I gave the order to put the helm hard over and he saw it carried out.

Q. He left the telegraph to do it?

A. Yes, sir.

Q. You went there and rang back to reverse?

A. Yes, sir.

Q. You got an answer on the repeating telegraph?

A. Yes.

Q. So as to know the engine was working astern?

A. Yes, sir.

Q. How long after that was it you went out and sung out to them to port the helm?

A. Two or three seconds.

Q. Did you look at the compass at all during this time?

A. No, sir, I did not.

Q. You didn't notice the buoys at all?

A. No, sir.

Q. Are you quite clear about this, that you were the one that ordered the helm hard-a-starboard and not the third officer?

A. Yes, sir, quite sure.

Q. Are you quite sure that the pilot was the one that gave the order to stop?

A. They both gave the order to stop.

Q. But you alone gave the order hard "a-starboard"?

A. Yes; it was me alone.

By the COURT:

Q. Both sung out?

A. Both sung out "Stop the engine."

Q. At the same time?

A. About the same time, about half a second; both at the same time as near as possible.

Q. Which sang out first, you or the pilot?

A. Might been the pilot, I am not quite sure.

By Mr. PUTNAM:

Q. When you drew the pilot's attention to this tug and tow coming across your course, did you point out where it was?

A. Point out? No, he was looking at the Talisman at the time directly I spoke to him, he looked that direction.

56 Q. You say you drew his attention to it; how did you draw his attention?

A. By speaking to him about it—I asked him if he couldn't see the Talisman crossing the bow—or tugboat.

Q. Did you say which bow?

A. No, I don't think I did say which bow, I don't remember that, but he couldn't help but see himself which bow she was on.

Q. She was right close then?

A. Yes.

Q. Is your bridge near the bow or near amidships?

A. It is about 100 feet from the bow.

Q. And your engine-room is near the stern, is it, on the tank steamer?

A. Yes, sir.

Q. Your oil compartments are all in the fore part of the ship?

A. About 200 feet of oil compartments out of the *the* 345 feet.

Q. Do you have a right-handed screw?

A. Yes, sir.

Q. You said you made an experiment on the subsequent voyage and that at a ten-knot speed she came to a dead stand-still; how soon?

A. One minute fifty-five seconds.

Q. That was with reversal directly following the stop?

A. Yes, sir.

Q. Did you notice how long it was after this collision that the steamer had headway pushing the tug through the water?

A. About a minute, or it might been less than a minute.

Q. Your judgment is it was pretty near a minute?

A. About a minute, yes, sir.

Q. Of course the tugboat was on her bow all that time, wasn't it?

A. Yes, sir.

Q. Did you notice whether any of it was sinking gradually while she pushed her through the water?

A. Yes, she was sinking all the time.

Q. That of course tended to check her way quicker than if she was going free?

A. Well, very little.

Q. According to your judgment it wasn't more than a minute before this collision that you first drew the pilot's attention to it?

A. Just about a minute.

57 Q. When you were in the chart-room calculating the distances were your windows or doors open?

A. The door was open; the windows were not open.

Q. Which door was open?

A. The door leading out from the chart-room on the after end of the house facing aft.

Q. About the middle of the house?

A. About the middle of the house, yes.

Q. And there was no window open on either the front or the sides?

A. No, sir.

Q. How long do you think it took you to figure up that distance that you had run?

A. Five or ten minutes.

Q. You had each day's run, of course, put down?

A. No; they were already entered down; I had simply to add them up and find out the average speed.

Q. Simply had to add up the runs of previous days and your run to the light-ship?

A. Yes, up to the light-ship.

Q. Of course, you knew the number of hours and you divided by that and made the average speed?

A. Yes, sir.

Q. Don't you think that took you but a very few minutes?

A. A very few minutes; five or ten probably.

Q. Perhaps not more than four minutes?

A. Perhaps not.

Q. Did you get that all done and figured up before you went on the bridge?

A. Yes.

Q. Do you remember what your average speed was?

A. 8.9.

Q. 8.9?

A. Yes, sir.

Q. When you came out of the chart-room you came out by this open door, didn't you, aft?

A. Yes.

Q. Did you go directly up on the bridge?

A. Yes.

Q. Is the chart-room on the main deck or up one flight from the main deck?

A. Up one flight.

Q. There is only one flight from the chart-room to the bridge where the pilot was?

A. Yes, sir.

Q. You went right up there?

A. I went right up there; yes, sir.

58 Q. Did you see this tug before you got up to the top of the ladder?

A. Yes.

Q. Saw it as you came out of the room?

A. Yes, sir.

Q. You say on this occasion you went up on the starboard; do you sometimes go up on the port side?

A. Yes, sir.

Q. Is there a stairway each side?

A. Yes, sir.

Q. Hadn't you heard something on the port bow that called you out to run up on that side?

A. No, sir; nothing at all.

Q. Nothing reported on your ship?

A. Nothing. I had some papers to sign, manifests and lists of stores.

Q. Those had been made out ready for your signature?

A. Yes, sir.

Q. How many signatures do you remember putting on those papers?

A. Five or six; had to look over them before signing them to see if they were correct.

By the COURT:

Q. Was anybody there with you?

A. No, sir, your honor.

By Mr. PUTNAM:

Q. They were put on your table ready for you to sign?

A. Yes, sir.

Q. Who makes those up on the ship?

A. The chief officer, chief engineer and chief steward.

Q. They were all there then, all the papers?

A. Yes, sir.

Q. Did you ring any bells for anybody to come to your room while you were there?

A. No, sir.

Q. You had no talk with any one while you were there?

A. No, sir.

Q. It might have been that those five or six signatures were put on in less than two minutes, were they not; you can't tell exactly?

A. The signatures were put in in less than that, but I had to look over the papers before doing that.

59 Q. There was no cargo manifest?

A. No. The abstracts of the log also to sign.

Q. It wasn't cold that day at all, was it?

A. No, it wasn't cold.

Q. Couldn't you hear in the chart-room if anything was reported from forward on the lookout?

A. If I was paying any attention to it probably I would.

Q. But you have no recollection of hearing anything?

A. No.

Q. Did you look at any watch at the time you went down below from the bridge?

A. No, sir.

Q. It is only now your recollection of the time you were below that makes you think it was half past nine?

A. Yes.

Q. Did you look at any watch at the time of the collision?

A. No, sir.

Q. How do you get the collision was four minutes after ten?

A. The third officer noted the time, always does, and the time was also noted by the engineer in the engine-room.

Q. I suppose you noted the time when you had the light-ship abeam?

A. Yes, sir.

Q. And that was the last time you noted it before the collision?

A. Yes, sir.

Q. What else was it you did below that you can remember besides adding up those days' runs?

A. Nothing important.

Q. Those are sent in for you to check?

A. Those duplicates.

Q. Those were made up by your chief officer?

A. And chief engineer and chief steward; the chief steward made out the list of stores.

Q. That is all you can recollect doing at that time you were below?

A. Yes.

Q. Let me ask you this: When you tried the whistle do you remember whether it was perfectly clear then, or was it little thick and showery at that time?

A. It was showery; little thick.

Q. You didn't see then any buoys or vessels ahead of you?

A. There was no buoys in sight at that time.

60 Q. And no pilot-boat in sight at that time?

A. I didn't see any.

Q. You can't tell exactly where you were at that time?

A. Not exactly.

Q. You didn't look at the course, that is at the compass heading at that time, did you?

A. No, sir.

Q. But you think it was somewheres about west?
A. Yes, sir.

Redirect by counsel for claimants.

By Mr. KIRLIN:

Q. How many voyages have you made in the Delaware?
A. This is my sixth.
Q. Between what ports have those voyages been made, all of them?
A. Between New York and London, and one voyage to Bristol.
Q. How many voyages had you made before the collision?
A. Two voyages.
Q. On each of those occasions you carried oil in bulk, did you?
A. Yes, sir.

Recross by counsel for libellants.

By Mr. PUTNAM:

Q. You know the rule, that if you are going to change your course to the port you can indicate it by whistles without any question, can't you?
A. Yes, sir.
Q. Did you think there was time to do it on this occasion?
A. I shouted instead.
Q. You thought they were too close to require it?
A. Yes, sir.
Q. If they had been further off you would have blown two blasts, wouldn't you?
A. Yes; to indicate that I was starboarding.
Q. You thought that they could hear you by word of mouth?
A. Yes, sir.
Q. As a fact, at the time you got the wheel hard-a-starboard and had worked the telegraph and got the answer back and gone to the edge of the bridge to speak to them they were pretty close, were they not?
A. About couple ship's-length.
61 Q. Do you mean your ship?
A. Yes, sir.
Q. And about four ship's-length off when you first saw them?
A. No, about couple ship's-length.
Q. How much had the steamer run between the time you first saw them and the time you had called the pilot's attention, stopped the engine and reversed and put the wheel hard over?
A. About 50 or 100 feet I should think.
Q. Not more than that?
A. Not more than that.

THOMAS NEISH, being duly sworn and examined as a witness for the claimants, testifies:

By Mr. KIRLIN:

Q. You are chief engineer of the Delaware, are you?
A. I am.
Q. How long have you been chief engineer?
A. This voyage only.
Q. Previous to that who was chief?
A. Mr. Chapman.
Q. He was guarantee engineer of the company whom you had with the ship?
A. Yes.
Q. And you joined her when his time expired, did you?
A. Exactly.
Q. What were you at that time?
A. I was second engineer.
Q. You were in the engine-room at the time of the collision?
A. I was.
Q. Doing what?
A. Discharging general duties.
Q. Who was in charge of the engine?
A. The fourth engineer.
Q. Did you hear a signal just before the collision from the bridge?
A. On the telegraph; yes.
Q. What was it?
A. "Stop."
Q. How soon was it followed, if at all, by any other?
A. Almost immediately.
Q. What was that order?
A. "Full speed astern."
Q. What time did that order come?
A. Three minutes past ten.
62 Q. Did you note it at that time?
A. I did at the time.
Q. How long did you go astern?
A. Four minutes.
Q. Did you execute the order immediately?
A. At once.
Q. Put the engines full speed astern?
A. Within eight seconds.
Q. You did it yourself?
A. I did.
Q. How long did the engines go astern?
A. Four minutes.
Q. Did you feel the shock of the collision?
A. I felt no shock at all.
Q. When did you first learn there was a collision?
A. One of the outside engine-room hands run down below and told us.
Q. Do you keep the log book?

A. I keep the log slate.
Q. Who made the entries in the log book itself?
A. In the log book? Mr. Chapman.

Cross-examined by counsel for libelants.

By Mr. PUTNAM:

Q. This log on the 16th of September is signed by John S. Chapman. He was the guarantee engineer?
A. He was.
Q. When did he leave the Delaware?
A. At the expiration of the last voyage.
Q. By "last voyage" do you mean the voyage in January?
A. Yes.
Q. And then you became chief engineer?
A. Then I became chief engineer.
Q. At the time of the collision who was at the blackboard or slate to take down the orders?
A. The fourth engineer.
Q. Who was actually working the engines?
A. Myself.
Q. You didn't actually then see the time that the signals came, I suppose?
A. The clock is in front of the reversing handle.
63 Q. The first signal you got was "stop"?
A. It was.
Q. Was there any perceptible time between the "Stop" and "Full speed astern"?
A. One second.
Q. Had you got the engine stopped before you got the order to reverse?
A. Well, no.
Q. You were in the act of shutting off the steam, I suppose?
A. Of reversing the link.
Q. Did you feel any shock of the collision?
A. No; none whatever.
Q. So you don't know when the collision occurred?
A. No; not when the collision actually occurred.
Q. You have in your log book "Stop and full astern, 10.03;" that was correct, was it.
A. That was correct.
Q. Up to that time you had been running at full speed?
A. Not full speed.
Q. You had been making how many revolutions?
A. About 56.
Q. You have 57 here, have you not?
A. That is what it was.
Q. You have 56.5. What is the pitch of your screw?
A. 17.75.
A. And about what is the slip?
A. Two per cent. in smooth water.

Q. The next signal was to stop, at 10.07?
A. From full speed astern to stop.
Q. Next "Slow ahead" at 10.17?
A. Yes, sir.

THOMAS THOMAS, recalled for claimants, testifies:

By Mr. KIRLIN:

Q. How long did you stay in the neighborhood of the collision before you came on to New York?
A. About twenty minutes or half an hour.
Q. I see an entry in the engineer's log "Slow ahead 10.17; full 10.25;" at which of those times was it you left the place of the collision for New York?
A. 10.25.
64 Q. What is this other entry for, "10.07"?
A. We had been maneuvring around there picking these men up.

Counsel for claimants offers in evidence the following entry from the mate's log:

"9 a. m. pilot and third officer in charge, Underwood on the lookout, Peyton, quarter at the wheel. Compass course west, variation 8½ W.; deviation 4¾ E. Wind southerly 4, pumped out No. 6 tank. Fine weather and smooth sea.
"9 a. m. arrived off Sandy Hook light-vessel; wind southerly and thick, heavy rain. Pilot in charge.
"10.00 saw tug Talisman with pilot-boat in tow crossing the channel at right angles to our course, about 1,300 yards off our starboard bow.
"10.03 Capt. Thomas rushed on bridge and immediately put engines full speed astern and hard-a-starboarded the helm.
"10.04 struck tug Talisman amidships, she sinking in about two minutes.
"10.07 stopped engines and stayed in vicinity of wreck for about half an hour, looking for missing fireman.
"10.25 proceeded for New York, engines working as required.
"11.12 received doctor's visit at quarantine and proceeded after landing crew saved from tug with the exception of missing fireman.
"11.52 anchored in ten fathoms of water off Tompkinsville. Draft on arrival 10.3 forward; 16.6 aft."

65 Mr. Putnam reads deposition of CONRAD FALKENBERG, on behalf of the libellants, as follows:

I was second deck hand on the tug Talisman, and had been on her about six days before the collision. At the time of the collision I was on duty. I was standing in the fire-room, and was leaning out the door. There was a heavy rain outside.

By Mr. PUTNAM:

Q. Did you see the steamer?
A. Yes, sir.

Q. How long had you seen the steamer?
A. Before the collision, about half an hour, I guess.
Q. Did you get any orders from the engineer to let go the line?
A. The last few minutes.
Q. And when he gave you the order where were you then, in the fire-room door?
A. Yes, me and the fireman.
Q. What did he tell you to do?
A. He thought it was best to go aft and let go the line; me and the fireman who was on watch, and we went aft together.
Q. Who went first?
A. Me.
Q. And the fireman behind you?
A. Yes.
Q. When you started aft how near was the steamer to the tugboat?
A. I was busy with the line, so I can't say, it was not far off.
Q. When you started from the door, how far off was the steamer?
A. Ten or twelve fathom, I guess.
Q. Did you get the line off?
A. No, sir, it was too late; I had to save myself.
Q. What did you do when the steamer struck?
A. I jumped right up on the line.
Q. The line was coiled up aft of the bitts of the tugboat, was it?
A. No, the towline that was used for the ship was coiled up there; I jumped up there and saved myself when the steamer struck.
Q. There was a spare towline coiled up there and you jumped up on that?
A. Yes.
Q. Did you go overboard?
A. —. Yes, sir, one man, I don't know who it was, and we went over together; I was hanging onto the line and he was hanging on the towline, and the towline sunk in the water and I sunk too; the line was straightened up again and I was pulled up and I didn't see anything and I swam back to the tugboat and got up on top of the house.
Q. When you got up on top of the house did you go up from her to the steamer?
A. To the anchor, and I see the engineer and the captain.
Q. Which got up the anchor first, you or the engineer?
A. The engineer; I was last.
Q. You were the last one?
A. Yes, sir.
Q. Did you lose any clothes?
A. Yes, sir.
Q. You lost all but what you had on?
A. Yes.
Q. Have you got a list of them with you?
A. Yes, sir.
Q. Is this the list I show you?

A. Yes, sir.

List is marked Libellants' Exhibit 3 of this date.

Q. Did you notice how hard the steamer struck your tugboat?
A. It was in the middle of the boat; I guess it was half way through.
Q. Did you notice any whistles?
A. Yes, I heard the whistles.
Q. What whistles did you hear?
A. I heard the captain blow one whistle first.
Q. That is the captain of the tug?
A. Yes, of the Talisman, and then after awhile he blew another and then I heard the steamer answer.
Q. What did the steamer answer with?
A. The last one.
Q. What kind of a whistle, one or two?
A. I thought it was one.
Q. How long was that before you ran aft to let go of the line?
A. It wasn't but a few minutes.
Q. Was it raining all the time?
A. Yes, heavy rain.
Q. You could see the steamer plain, couldn't you?
A. Yes, sir.
Q. Did the steamer appear to stop at all before the collision?
A. I thought she was going fast ahead all the time.

67 Cross-examination by Mr. KIRLIN:

Q. Where did you take this pilot-boat in tow?
A. It was about an hour and a half before the collision, I guess.
Q. Where was the pilot-boat when you went to her first?
A. It was inside the bar; he told us to take him over the bar because there was no wind.
Q. Was he anchored?
A. Yes, he was anchored.
Q. Above the channel?
A. No, I don't know.
Q. You know what the buoys are for along there, don't you?
A. No, I was only there six days.
Q. What time did the collision occur?
A. About ten o'clock.
Q. And you had picked up the pilot-boat at half past 8, had you?
A. Yes, half past 8 or 9 o'clock.
Q. Had you been towing her continuously from the time you picked her up until the collision?
A. Yes, we was towing her.
Q. How long a towline did you have out?
A. I don't know exactly.
Q. Was it ten fathoms?
A. It was more than that.
Q. How much?

A. I guess it was 30, I don't know, sir.
Q. You say you saw the steamer half an hour before the collision?
A. Half an hour about, I can't tell you, exactly.
Q. When you first saw her, how did she bear away from your vessel?
A. About so (indicating).
Q. He was bearing about two points on your port bow?
A. Yes, perhaps two or three points.
Q. Wasn't there any fog between the time you first saw the steamer and the collision?
A. Yes, the steamer went forward.
Q. Was there any fog?
A. No, sir.
Q. Wasn't there a squall?
A. Yes.
Q. Didn't the weather thicken up a little?
A. Yes, a little.
Q. Didn't you lose sight of the steamer from the time you first saw her until the collision?
A. No, sir.
68 Q. You saw her all the time for half an hour?
A. Yes, sir.
Q. Did she appear to be coming fast all the time?
A. Yes.
Q. Your boat kept on going ahead until the collision, did she?
A. Yes, sir.
Q. Did you hear any bells——
A. No, sir.
Q. —sound in the engine-room while you were in there, just before the collision?
A. No, sir; I didn't hear any bells.
Q. How long had you been in the engine-room?
A. I was in the fire-room; I was staying there; I could have heard a bell easily there, but I didn't hear it. I don't know after I went to the line, I can't tell.
Q. But before you went to the line, there wasn't any bell sounded in the engine-room?
A. No, sir.
Q. Did you hear the engineer say that he was going to put her ahead, or did put her ahead full speed to try to get across ahead of the steamer?
A. No, I didn't.
Q. What was the engineer's name?
A. I don't know, sir; it is a long time; I forget.
Q. How did the steamer bear from your boat when you were looking out at her out of the engine-room door, just before you went aft to loosen the line?
A. More in the middle of the ship (indicating), nearer a right angle.
Q. Was she bearing right towards the middle of your ship, then?
A. Yes, sir.

Q. Where did she strike?
A. Right in the middle of the boat, a little aft of the boiler in the engine-room?
Q. Did you go aft to loosen the towline before or after the steamer blew the whistle that you say she blew?
A. It was far after I heard it blow.
Q. Are you sure you heard the steamer blow any whistle at all?
A. Yes, I heard it blow one whistle last.
Q. Did you see the steam from the pipe?
A. Yes.
Q. You are positive of that, are you?
A. Yes.

69 Q. Might not that whistle have been from some other vessel?
A. No, sir; it was from the steamer the last time.

Q. How long was that before the collision?
A. I can't tell; five minutes.
Q. How many ship's-lengths was the steamer away when she blew that whistle?
A. I guess about three minutes before; that's hard to tell.
Q. Was she half a mile off or a quarter of a mile off?
A. No, I don't think she was, it wasn't so much.
Q. You don't know much about this, do you?
A. No; well, I guess it was two or three minutes before.
Q. Are you going away to sea anywhere?
A. I will take anything I can get.
Q. Where do you live?
A. Over in Brooklyn, No. 18 Hamilton avenue.
Q. Where have you been employed in the last year?
A. I have been aboard steamers around here.
Q. Around these waters?
A. Yes, sir.
Q. Been making your home in Brooklyn all the time?
A. Yes, sir.
Q. Do you expect to go away to sea, or do you expect to get employment somewhere around the harbor?
A. It is hard to get work now; I don't know what I can do.

70 Mr. Putnam read deposition of RICHARD WAUGH, on behalf of the libellants, as follows:

Q. You were on the pilot-boat No. 7, were you not?
A. Yes, sir.
Q. What position had you on her?
A. Boat-keeper of her.
Q. How long have you been boat-keeper?
A. Three years last May.
Q. You remember the time of the collision with the Delaware, and at that time you were on deck, weren't you?
A. I was on deck.
Q. How long had you been on deck?

A. Since 4 o'clock that morning.
Q. You were on deck when the tug took you in tow?
A. I was.
Q. Did you have anything to do with paying out the towing hawser?
A. No, sir.
Q. You don't know exactly how many fathoms were given out?
A. Paying it out to the towboat at the start, then I gave out about fifteen fathoms, that is what we generally give them.
Q. A short towline?
A. Comparatively short; yes, sir.
Q. That led from which bow of the pilot-boat?
A. From the starboard bow of the pilot-boat.
Q. Was it your line or the tug's line?
A. Our own line.
Q. When you first were taken in tow was your anchor up?
A. We were heaving away the anchor when the towboat took us.
Q. How long did it take you to heave the anchor up and get it aboard?
A. Didn't have it aboard at all; just heaved it up, might have been half way or three-quarters, had it hanging from the hawse pipe, hanging on the chain.
Q. Did you remain forward then up to the collision?
A. Not up to the collision, but to the moment before.
Q. Then you ran aft?
A. I ran aft and took a yawl from each side.
71 Q. Did you have any sail on?
A. Yes, we had two reefed mainsail hoisted up, that is all.
Q. That was when you were at anchor?
A. While we were at anchor when the tugboat took hold of us and while towing her.
Q. Was there any wind at all?
A. Not at the time, no.
Q. You couldn't have carried the mainsail very well towing if there had been wind, could you?
A. We could carry it towing head to the wind, or we could carry it going broadside to the wind, according to the weather.
Q. Who was steering the boat?
A. Captain Berry.
Q. Was there any other pilot on deck while you were towing?
A. I don't think there was; might have been one; Mr. Mapes might have been on deck, but the other three were below I believe until just before the collision Mr. Berry sung out for them to come up.
Q. Did you see the steamer Delaware before the collision?
A. Yes.
Q. When you first were taken in tow and started, how far off was the Delaware then?
A. When the towboat first came and give us a line he must have been very nearly five miles off.
Q. Was he pointing then right for the channel?

A. Pointing in the course about west by north, half north.

Q. Was it rainy weather?

A. Raining, misty; we seen the steamer about two hours before, and then it shut in and then we saw him again about a mile off.

Q. When you saw it a mile off were you still in tow?

A. Still in tow.

Q. At that distance off was it clear so you could see objects well?

A. Yes, sir.

Q. Did you hear any whistles blown by the tug?

A. Heard one whistle blown twice.

Q. When the tug blew the first whistle how far off was the Delaware?

A. I should judge she might have been a mile.

72 Q. When he blew the second whistle he was much nearer I suppose?

A. Much nearer.

Q. How near was he then?

A. Might have been a quarter of a mile; pretty near; had the flood tide coming in with him, coming very fast.

Q. How fast do you think the steamer came over the ground taking the tide and all?

A. Taking the tide and all, very near twelve miles, tide and all.

Q. Did you see any indication that the steamer slowed just before the time of the collision?

A. I did not and I watched; I passed the word to the man that was helping me get the anchor up that "if the steamer don't stop she will hit us."

Q. Did you see any change of course by the tugboat until the time of the collision?

A. Not until hard-a-port just before she struck us to try to get across the steamer's bow when he seen it was unavoidable.

Q. Did you notice any change of the towing hawser, whether the hawser slacked up?

A. No, I think not; I think the tugboat kept right on ahead.

Q. Was she going fast or not?

A. Towing us probably about five miles.

Q. You were not aft at all to see what the compass course was?

A. I was not aft, but I could tell pretty near because when she was towing she was crossing the channel.

Q. How was she crossing the channel; that is, towards what buoys, in what direction?

A. Heading between the two outer buoys.

Q. To take you out to the station?

A. To take us out to the station; she had just passed between the two outer edge spar buoys heading out between the outer red and the outer black one.

Q. Was she heading about the same way at the time of the collision?

A. No, she was heading more across the channel at the time of the collision.

Q. How near, if you noticed, did you pass going out to the second red buoy?

A. There are three spar buoys and the outer can buoy.

73 Q. At the time you were taken in tow what buoy was the pilot-boat nearest to?

A. Nearest to the second red spar buoy.

Q. By the second you mean the middle one?

A. Yes, sir; the middle one. There are three spar buoys and one can buoy on each side of the channel.

Q. By the second spar buoy you mean the third of the buoys altogether?

A. Yes, the third of the buoys altogether, the third red buoy.

Q. Starting from the third red buoy or near it, how near did you pass to the next red buoy, the middle one?

A. I should judge we ought to be about between each.

Q. You mean about half way between the red and black?

A. No, we were just inside the channel; we might have been very near half way in the channel.

Q. Whereabouts was the collision?

A. I should judge the towboat was about in midchannel when she was struck, that is, allowing for the length of the hawser and everything, pretty near midchannel I should judge.

Q. Was there any other vessel in the channel at the very time of the collision?

A. No, sir.

Q. The steamer had the full width of the channel to navigate in?

A. To navigate in.

Q. Did you see any reason why the steamer couldn't port and go under your stern?

A. None whatever.

Q. How much room do you think there was between the stern of your pilot-boat and the red buoy at the time of the collision?

A. There was room enough for a steamer to pass; there was no necessity for him keeping right in there because he was a light draft steamer.

Q. Plenty of room to the north of the red buoy?

A. If he wanted to, or if he didn't want to he could stop the ship.

Q. When did you first think there was going to be a collision?

A. When the Talisman blowed the whistle the second time.

Q. After that did you give any orders about getting the yawls out?

74 A. I told the men to get aft; in the meantime we had the yawl alongside on the port hand, just towing alongside, and I dropped that aft.

Q. Why did you order the men aft?

A. I was afraid we were going to get it; it was my idea at the time.

Q. Did you see any slackening or slowing of the steamer up to the time of the collision?

A. No, I did not.

Q. How were these whistles of the Talisman as to being loud or not?

A. Regular sound; the regular way they blow. I should judge the steamer ought to hear them.

Q. Which way was the wind at the time?

A. The wind was eastward; raining.

Q. Was it at all strong?

A. Oh, no.

Q. About how high on your pilot-boat did your mainsail come; I mean about how many feet above the deck, allowing for the reefs that were in it, how high did it come just as it was at that time?

A. I should judge about, maybe twenty feet; probably more; I can't really tell.

Q. From the time that the steamer had gone into Gedney's channel until the collision, was there any difficulty to see vessels; was there any fog or mist or anything to prevent the steamer seeing the pilot-boat and tug if they had a lookout?

A. No.

Q. You speak of the*ir* being a squall or something of that kind that shut in the steamer before; how far off was the steamer then?

A. The steamer was three miles; two or three miles off.

Q. During the last mile there was no trouble to see?

A. No trouble whatever, no.

Cross-examination read by Mr. KIRLIN:

Q. How far do you say you passed to the northward of the second red buoy?

A. We passed about between the two; maybe we passed about the same distance to the northward as we did to the eastward.

Q. How far away from the buoy did you pass it when you had it abeam?

A. I should judge 800 feet of the second red spar buoy;
75 there are three spar buoys on each side that mark the channel, and these two large iron tanks that mark the outside edge of the channel; what we call fair-way buoys.

Q. You were anchored some distance to the northeast of the buoy?

A. Yes.

Q. What buoy was that?

A. That was the inner spar buoy.

Q. Then there were two spar buoys between that and what you call the can buoy?

A. Yes, two.

Q. You were nearest the third spar buoy?

A. Yes.

Q. How far away from it?

A. I couldn't really say.

Q. In going out you kept to the eastward of the second spar buoy?

A. Yes.

Q. And the first spar buoy?

A. No, not the first.

Q. You passed between the first spar buoy and the can buoy?

A. No, passed between the first and second spar buoy.

Q. How far off from the second spar buoy were you when you had it abeam?

A. I should judge about 800 feet.

Q. And then you were heading for what black buoy?

A. Heading outside of the outer black can buoy, heading for our station.

Q. Before that your course had been nearer on a line with the spar buoys, had it not?

A. No, it was right straight course all the way; kind of cut across the channel like.

Q. Hadn't you been on a course nearer in a line with the spar buoys before you started to cross the channel?

A. Might have been, I didn't notice; might have been a slight difference in the course before.

Q. At the time of the collision you were heading right on a right angle to the channel, weren't you?

A. Yes, on a kind of a right angle.

Q. You must have changed your course a considerable distance to the southward at some time or another; when did you do that; before you passed the red buoy?

A. Didn't change the course to the southward at all.

76 Q. If you had steered on a course from where you were anchored, to pass near the outer can buoy, you would have crossed the channel at an angle of about two or three points, wouldn't you?

A. Three points, yes.

Q. At the time of the collision you were headed at right angles to the channel?

A. At the time of the collision we were a-port on the pilot-boat and I think the towboat was too at the time she was struck.

Q. Both your boats were then at right angles to the channel?

A. Yes, because Mr. Berry hard-a-ported the helm and that slewed us.

Q. Then you were at that time about 800 feet southward of the line of the red spar buoys, at the time of the collision?

A. No, sir; I can't say we were 800 feet to the southward, might have been to the southeast, we were about midway in the channel and the channel is 4,000 feet wide I believe.

Q. Captain Berry testified the channel was 1,100 feet wide, and if the tugboat was in the middle of it at the time of the collision, and you had fifteen fathoms of line and length of your boat, you must have been not more than five or six hundred feet inside of the upper edge of the channel, mustn't you?

A. The northeast edge of the channel, yes, about that I should judge.

Q. What I want to get at is where was your boat with reference to the upper edge of the channel when you changed your course

from a line crossing the channel at three points, so as to bring you at right angles to the channel?

A. Almost the same place; it is a very short boat and will turn very quick with the tugboat onto us.

Q. Didn't you make that change pretty soon after you got inside the channel?

A. Yes, pretty soon; of course I don't know what you call pretty soon.

Q. Two or three lengths of your boat before the collision?

A. That I really can't say because I was forward.

Q. I want your best judgment about it?

A. No, I can't say that we did.

77 Q. How many lengths do you admit?

A. I wouldn't care to admit any; I have to admit some, I suppose; I should judge about three or four lengths of the boat.

Q. How long is your boat?

A. I think about 70 feet; I won't say for certain, between 65 and 75 feet long.

Q. Before you made this change of course how did the steamer bear from your vessel, how many points off the port bow?

A. Probably four points.

Q. And the change brought her to about abeam?

A. Very near abeam, yes.

Q. I understood you to say that the tug made the same change of course that your boat did?

A. I really can't say; I think the tug hard-a-ported his helm just before the steamer struck her, that is all I can say in regards to that.

Q. How many lengths of the steamer away do you think?

A. I don't think she was her own length away when he made that change.

Q When he hard-a-ported?

A. When he hard-a-ported we were heading on more of an angle than the tugboat was because we kind of thought the tugboat might get clear of him and then he would pick up the hawser and swing us alongside.

Q. Do you think the steamer was under full speed at the time of the collison.

A. I think so, yes.

Q. Did you notice how far she went into the tugboat?

A. No, I did not; all I heard was a crash and looked around and the tugboat was sinking.

Q. Don't you think she would have gone clear through if she had been making 12 knots?

A. No.

Q. She bore the tugboat from the middle of the channel clear down to the lower edge, didn't she, before the tugboat sank?

A. According to the buoy out there she is very near the lower edge.

Q. What speed do you think the tugboat was making at the time of the collision?

A. I should judge by the way we was towing through the water, must have been making about 5 mile an hour.

Q. How long do you think you had been in tow?

78 A. I guess from the time he started us ahead, from the time he got the line out, might be half an hour, and he must have been towing us for about 15 minutes, he had the line out maybe half an hour; we had to heave the anchor off the bottom before we started ahead.

Q. You think it would take 15 minutes going at the speed of 5 miles an hour to tow you 4,000 feet?

A. I think so, yes.

Q. What became of this mist or thickness of the atmosphere that obscured the steamer between the time you first saw her and the second time?

A. I can't tell what became of it, it was merely a rain squall, that is all.

Q. Wasn't there some of it around at the time of the collision?

A. None that I see.

Q. Wasn't it raining at the time of the collision?

A. Not raining, not as I recollect; I don't think it was, it was a damp misty morning all straight through, but then you could see all the morning except when the rain squall shut down and of course everything shut in.

Q. Do you say it wasn't raining hard at the time of the collision?

A. I don't think it was raining at the time; it might have rained after the collision, but at the time of the collision—I won't say, I was pretty excited myself in regard to that; I know I was soaking wet right through all the morning myself.

Redirect by Mr. PUTNAM:

Q. Did you feel afraid the steamer would hit the pilot-boat?

A. Yes, I was at the time, I thought it might get across and hit us.

Q. Did you hear anything said why at the time they put the wheel a-port on the pilot-boat?

A. I heard Mr. Berry say, "My God! what is that man going to do, drown us?" or something similar to that.

Q. How much do you think you sheered the head of the boat under that last porting just before the collision?

A. Might have sheered two or three points.

Q. Your fear was that the hawser would get foul?

79 A. I was afraid he might pick up the hawser, that was my idea.

Q. You thought possibly he would go between the tug and the schooner?

A. I did, yes.

Q. Had there been any change of course up to that time when he said, "My God, what is that man going to do, drown us"?

A. I don't think there was.

Recross by Mr. KIRLIN:

Q. Where were you on deck with reference to where Captain Berry was at the wheel?

A. I was forward attending to the anchor.

Q. You weren't paying any special attention to Captain Berry to see whether he put the wheel over or not?

A. I was paying pretty good attention because I looked aft to see where he was because sometimes they look to me to do these things and sometimes they do them themselves. I looked to see he was there and because I expected to get orders to let go the line or cut it and I see him shoving her hard-a-port.

Q. Do you think your boat would swing four points while she was going her length?

A. No, I said two points.

Q. You say you were crossing the channel at an angle of about three points at the time of the collision, you were headed right straight across—that would be five miles—at right angles to the channel, I think, is what you said?

A. The course was northwest or west by north half north and we were steering I thought, myself, about southeast by south or south-southeast, that is my judgment; in looking at the line of things I could pretty nearly tell.

Q. Weren't you heading west of south at the time of the collision?

A. At the time of the collision I think we were, yes, sir, south or west of south; no, I think we were heading south at the time of the collision.

80 BROOKLYN, *Feb. 19th*, 1894.

Met pursuant to adjournment.

Mr. Putnam reads deposition of JOHN FLANNERY, taken on behalf of the libellant, as follows:

Q. You were the chief engineer of the tug Talisman, and were on her at the time she was run into in the collision with the steamer Delaware?

A. Yes, sir.

Q. How long had you been on the Talisman?

A. From the 4th of August up till the 16th of September.

Q. The day of the collision?

A. The day of the collision.

Q. How long have you been on tugboats?

A. About thirty years.

Q. Have you also, besides being an engineer, acted as pilot?

A. Yes, sir.

Q. Have you a license as a pilot?

A. Yes, sir.

Q. What tugboat were you on before the Talisman?

A. On the tugboat Alexander Bartley.

Q. You live in what place?

A. 708 Fourth Ave., South Brooklyn.

Q. What was about the size of the Talisman's engine?

A. 22 by 24.

Q. That morning of the collision do you remember when they took the pilot-boat in tow?

A. Yes, sir.

Q. What kind of weather was it when they took the line to the pilot-boat?

A. Well, the weather was rainy and blowing; kind of hazy weather; but I wasn't watching those points of the compass at all at that time, because I was disinterested in those things you see.

Q. But you remember it was rainy weather?

A. Yes, sir; very heavy.

Q. In the engine-room is there a door on each side?

A. Yes, sir.

Q. How long was it that you were towing the pilot-boat before the collision?

A. To the best of my judgment it was about 25 minutes
81 from the time we took ahold of her—of course I can't rectify that entirely, I wasn't paying much attention to those things.

Q. About what is the full speed of the tug Talisman; how many revolutions?

A. She would make in the neighborhood of 120 revolutions a minute; we was going under one bell then.

Q. When you were towing under one bell, then, how many revolutions would she make?

A. Between 50 and 60; around there.

Q. That was about the same speed all the time after you took the pilot-boat and got started?

A. No; it first went slower than that—and then we rung the bell to go a little faster—in order not to part the line.

Q. When you first started her ahead, to go easy on the line, how many revolutions was she making then?

A. About 30 or 35; something like that; I can't go into details of that because it is more than a man can bring his judgment to in such a time.

Q. After you got the regular bell to go ahead and got straightened out on the tow, then you think it was 50 or 60?

A. I think it was 50 or 60 that time.

Q. Do you remember seeing the steamer Delaware that ran into you?

A. Yes, sir.

Q. When you first saw her, out of which part of the engine-room did you see her?

A. Out of the engine-room door.

Q. Which side?

A. Port side.

Q. How far off was the steamer at that time?

A. I should judge her to be half a mile, according to my best judgment.

Q. Did you see her from time to time up to the collision?

A. I never took my eyes off her from that afterwards; yes, sir; I did on one occasion, to look aft when I told the men to cut the line or let it go I looked aft.

Q. But except that time you kept her in sight all the time?

A. Except that time I never stopped looking at her.

Q. Did you see any change of course by the steamer?

A. I seen no change of course by either boat.

82 Q. No change of course by your boat?

A. No, sir.

Q. Did your hear any whistles?

A. Yes, sir.

Q. What?

A. I heard the tugboat Talisman blow one whistle to go ahead, and after a little while I heard it again, and then I heard it answered from the steamer.

Q. When did you first think there would be a collision?

A. When I first thought there would be a collision was after the first whistle.

Q. After the second whistle what did you think?

A. I knowed there was going to be one then.

Q. Did you send anybody aft to cut the line?

A. At that time, after the first whistle and before the second whistle blowed I sung out to them to run aft—well, let me see—give me a moment to think whether it was before or after—I think it was before, between the two whistles, after the first whistle and there was no answer; and before we blowed it again, or about the same time; I don't know, but it was near the time, I says, "If you will let go the line or cut it I will open her up," but I never got no reply.

Q. How far off do you think the steamer was when you sent them aft?

A. Well, about—approaching each other then.

Q. Was she a length off?

A. Well she was the length of the towboat off.

Q. But not the length of the steamer?

A. Oh, no; oh, no.

Q. Who did you send aft?

A. There was a deck hand and fireman that stood in the fire-room door. I didn't send them aft, but I said, "If you don't let go that line or cut it they will run us down."

Q. You thought that was the only way of escape?

A. That was the only escape, if they had done it.

Q. Were you still going ahead at about 60 revolutions?

A. We had never moved the engine.

Q. It was still going the same as when you first straightened on the line?

A. The same; yes, sir.

83 Q. Did you hear anything from the men after they went aft?

A. No; I waited in the engine-room for a reply that they had cut the line or let it go, but I got none.

Q. How long did you wait?

A. Till both the boats lapped; that is, the Talisman had gone far enough across the ship's bow to reach the Talisman's house, and then I went out on deck and grabbed ahold of the house on the starboard side.

Q. You were standing there at the time of the collision?

A. I waited and saw the steamer passing; just going along like that (indicating), and saw her hit us.

Q. How much did she go into the boat?

A. Her stem went up and down through the joiner-work of the towboat and the house; her stem came up so that her anchor tore our rowboat on the upper deck.

Q. Did you climb on the upper deck?

A. Yes, sir, and got on the anchor.

Q. And got on the steamer that way?

A. Yes, sir; and there was the old man——

Q. You mean Captain Winnett?

A. Yes, sir; and then up came the deck hand that went aft to cast the line off.

Q. What became of the other man that went aft?

A. He couldn't give me no account of him.

Q. When you got aboard the steamer did you know how many were living and how many were lost?

A. Not first off till they hollered to me from the boat.

Q. When the boat came alongside the steamer you sung out to the men in the boat?

A. When I got up on the bow of the steamer a man in the small boat hollered to me, "Is that you, Johnnie? I am glad you are saved." And I says, "Where's Gus?" Gus was the man that was asleep below.

Q. What did he say?

A. And he says, "Gus is here; he's safe."

Q. That is, in the rowboat?

A. In the rowboat. Then I says, "Is the steward safe?" and he says, "Yes," and then I says the fireman was missing, and they seemed to know that man was missing too.

84 Q. Die you say to the men in the boat, either at that time or any time, that you opened the tugboat out, and you rushed to the levers and opened her out full speed?

A. No; at that time, when they were in the rowboat and things were floating around in the water, I sung out to Jim, "If you see my old vest around there, my license is in the pocket, get it for me." It wasn't my license at all, but a letter that was in it that I wanted, but I didn't say that to him. When they came alongside the steamer I says to Jim, "I told the fireman and deck hand to run aft and cast the line off, and if they had have done it, or sung out to me, I would have pulled the boat open." I mentioned the word, but I did not do it.

Q. As matter of fact, you didn't do it or say that you did open the levers of the boat?

A. No; I said I would have done it; that was my intention.

Q. Suppose that they had succeeded in casting off the towline, do you think you would have been able to have got the tugboat clear?

A. I think I would.

Q. You would have tried to?

A. Whether we would have got clear or not it was the only move to make; it was impossible to stop a boat and break her headway in that close space.

Q. How near amidships do you think the stem of the steamer struck?

A. Of the boat?

Q. Yes; did she strike nearer the bow or nearer the stern?

A. Abaft of the engine; right in the stern of the engine.

Q. Is that half way from the bow to the stern?

A. More than half; two-thirds; fully two-thirds.

Q. Did you lose anything by the sinking of the tugboat?

A. Yes, sir; I lost all my clothes I had aboard.

Q. Everything but what you had on?

A. Everything but what I had on.

Q. Have you got a little statement here of the things you lost?

A. Yes, sir.

Witness produces paper in the form of a letter; it is marked Libellants' Exhibit 4.

Q. Have you made in this paper a correct statement of the things that you lost in the tugboat?

A. Yes, sir.

85 Q. And they were fairly worth what you put down here, $35?

A. To the best of my judgment.

Q. Was there any time after you first saw the steamer, half a mile off, that you couldn't see her if you looked at her, was there any thickness of the weather, or fog, to prevent you from seeing her?

A. There was no time from the time I first saw the steamer, that I took my eye off her, only when I looked aft for to get a reply from those men whether the line was cut or not, and then the pilot-boat seemed to be steering to port, she had put her helm over to starboard and was steering off the other way.

Q. Was there any time when you looked at the steamer and she was shut in from you by any fog or *or* thick weather, or anything that prevented your seeing her?

A. Not at any time.

Q. If the steamer had a good lookout on her, was there anything to prevent her from seeing you?

A. Not that I can understand.

Q. You say that just before the collision you looked back and saw the pilot-boat; how did she appear to be?

A. As if she had put her wheel to starboard and was sheering over the other way; that was just previous to my leaving the engine-room; because I waited for a reply and received none, and the re-

sult was that I was afraid to pull the boat over for fear that I might entangle them in it some way.

Q. When you looked back and saw the pilot-boat then you were on the starboard side of the tugboat?

A. On the starboard side of the tugboat all the time until I left the engine-room; I never left that spot.

Q. How far off do you judge the steamer was when you first heard the whistle blown to her?

A. Well, I don't know about how to judge that; it was raining and foggy at the time.

Q. A good distance, was it?

A. Yes, sir; a very good distance; plenty of room for both vessels.

Q. Was there plenty of time for the steamer to act when the first whistle was blown?

A. Time for both of them to act then.

86 Q. Was there any reason that you could see why the steamer didn't act on hearing that whistle?

A. Well, I don't know whether she heard the whistle.

Q. Was it a good loud whistle?

A. Yes, sir; it blowed good and loud, but they didn't answer it.

Q. When the second whistle was blown, was it an ordinary blast of a tug's whistle?

A. Yes, sir.

Q. Did you hear the answer from the steamer?

A. Yes.

Q. You are not sure, when the second whistle was blown, whether you had sent the men aft or not?

A. It was between the whistles, to the best of my judgment.

Q. But you are not sure?

—. No, sir; they were close moments, and I couldn't tell closer than I have.

Cross-examination read by Mr. KIRLIN:

Q. Did you notice where you picked up the pilot-boat?

A. Yes, sir.

Q. Where was it?

A. To the eastward—more over to the eastward of the way we were towing her across.

Q. How far was she to the northward of the red buoys?

A. You've got me there; I wasn't interested in that branch of the business; I was attending to the engine-room, and the pilot-boat was away to the eastward of her channel.

Q. Half a mile do you think?

A. Oh, yes; more than that.

Q. Three-quarters?

A. Well, now, I will show you; we took a pilot off a steamer going up, and we were towing—there was a rowboat was coming from the pilot-boat after a ship as we were going out; we stopped alongside of the outgoing steamer and took the pilot off her, and

was returning to the pilot-boat, and picked up the yawl, and was towing the yawl back to the pilot-boat, and went aboard of the pilot-boat. Then they hailed us to pull them down closer to the station.

Q. And then you started to tow them down to the outer buoy?

A. Yes, sir.

Q. Can you tell us at about what angle of the channel
87 you were crossing?

A. No, I don't know as I could tell you; I think we were going right straight across; we was over to the eastward and steering right across the channel due east; but I hadn't seen the buoy; I saw it after I got on the steamer.

Q. Were you crossing the channel at right angles to the channel?

A. Yes, sir; the ship was coming in the channel; we must have been crossing, going to it.

Q. What was the angle of the collision between the steamer and your boat? Will you please place the models about as the boats were at the time they came together—when they struck?

A. Just at the stern of the engine, right abaft the engine.

Witness puts down the models, and after they are marked, says: "That would not allow for the house on the tugboat; I think that would be abaft the house."

Q. Please place them again as you think they actually were at the moment of the contact.

A. She went into our cabin, I know.

Witness does as directed, and the models are marked—the first diagram A, and the second diagram B.

(Here follows diagram marked p. 87*a*.)

Q. Had the vessels been bearing in the same relative position to each other during all the time that you saw the Delaware preceding the collision; that is, at about right angles to each other's course?

A. Yes, sir; about the same all the time, only drawing closer to each other; that is, we both went ahead.

Q. You said the second signal from the tugboat was answered by a whistle from the steamer. What whistle did the steamer make?

A. One whistle.

Q. How far off was she then?

A. Well, she was pretty close to us then; we was drawing very close then. The distance couldn't have been far—couldn't have been over the length of the boat, I don't believe.

Q. What did you think she was going to do by porting at that late hour?

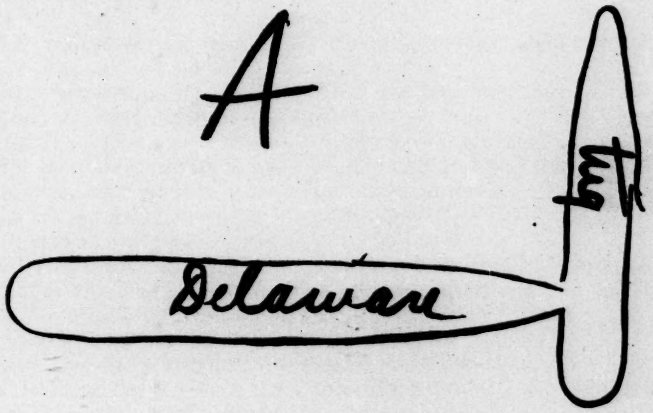
A. Who?

Q. The steamer?

88 A. By porting at that late hour? I don't know as she could do anything by porting. I don't know as her helm would have helped her at that late stage of the game.

No. 570.
"Delaware"
v.
Winnett
} p. by a

A



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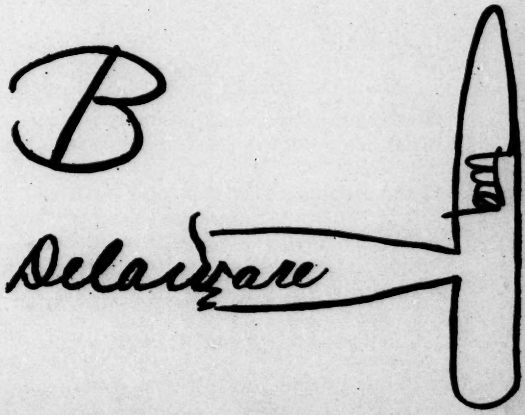

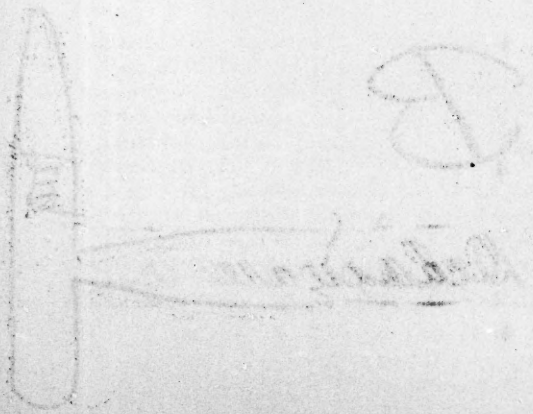

Q. The vessels were too close, then, to avoid a collision?

A. No; backing on the steamer might have broke it.

Q. The steamer must have been stopping?

A. Yes, sir, or she would have gone right through us. The steamer was going slow at that time, and so were we. We were under one bell. Neither one was going at full speed.

Q. Where is this joiner-work that you say the steamer went into? How far from the tugboat's side?

A. There are boats of different sizes. I suppose there was a space of 4 feet.

Q. How many feet do you think the stem of the Delaware cut into your tugboat, taking from the rail?

A. Four feet, I should judge. I could get you a measure of that.

Q. What was the width of the tugboat?

A. I think she was, to the best of my judgment, about 22 feet.

Q. The steamer must have been pretty near stopped then?

A. She was, or I wouldn't have been here to tell it.

Q. She must have been pretty near stopped?

A. She was pretty near stopped.

Q. Did you notice whether your boat was borne over towards the lower side of the channel, some distance beyond where she was at the time she was struck, before she sunk?

A. I didn't have time to look around for that.

Q. How long do you think the vessels were together?

A. Well, from the time we went across her bow till the boat left, I suppose it was about a minute.

Q. Before she went down?

A. Before she went down.

Q. Did you see her sink?

A. She went right down under my feet. When I stepped on the anchor the boat went down. I wasn't looking for anything. Before she hit us I was only looking to see how I was to be saved.

89 Q. Have you ever been a pilot on tugboats?

A. Yes.

Q. Have you commanded tugboats?

A. Yes, sir.

Q. How long?

A. I have had a license as pilot for 10 years.

Q. How long did you act as pilot?

A. For two years, off and on. I steered the Alexander Bartley for six or seven months, and I steered a boat of my own, named A. M. Ball, about a year.

Q. During the time that you were pilot did you navigate out and around the main channel and Gedney's channel?

A. Well, I never went down there much. I never went down with the boats I had. The boats were small harbor boats.

Q. About what place in the channel do you say the collision occurred?

A. They told me it was the mouth of Gedney's channel.

Q. How far from one side?

A. That I couldn't tell you.

Q. You didn't notice that?

A. I didn't notice that at all.

Q. Was there anything to have prevented the Talisman from slowing down or going under the steamer's stern, instead of keeping straight on in the effort to get across the channel ahead of her?

A. There was nothing to prevent either one, that I saw at the time. There was nothing but the two vessels and the ocean, and I can't bring in any preventer there.

Q. Do you know how the tide was at the time?

A. No, sir.

Q. Don't you remember that the tide was flood?

A. I do not remember, because, you see, when you are in the engine-room you don't generally take much interest in the matter. If we are towing something heavy against the tide, we have got to tow easy.

Q. But this was a light tow?

A. Yes; but we were towing her easy.

Q. Was there anything to have prevented your boat from stopping at the time the first whistle was blown, when you first thought there was danger of collision?

90 A. No; there was nothing to prevent us from stopping——

Q. If the tide was flood the pilot-boat wouldn't have run up onto you?

A. We were running across the tide that time. The tide was running this way and we were running across that way (indicating).

Q. As a pilot, do you think the navigation of your boat was good?

A. Well, I can't say that, and I can't say that it was bad either; I don't know what to say to that question—I wouldn't like to decide on that, because I am not answering as a pilot, I was engineer.

Q. You are also a pilot, and qualified to answer as such?

A. Yes, sir.

Q. If you had been in the pilot-house do you think you would have kept steadily on your course?

A. Not if I knowed there was going to be a collision.

Q. Would you, in the face of the risk of collision, which you saw out of the engine-room?

A. When I saw it I don't know as he saw it; I might see it a long time before.

Q. If you had been in the pilot-house and had seen the Delaware the same distance off that you saw her out of the engine-room door, bearing the same way, would you have kept on the same way as Captain Winnett did?

A. If I was in his position I suppose I would have done the same as he done; but if I was in my—a man in the engine-room can't use the same judgment as a man in the pilot-house, because he has a different elevation, and there can't be two men using their judgment to run the vessel, one in the engine-room and one in the pilot-house; two captains, one at each end, wouldn't work at all.

Q. Isn't it usual for tugboats with a light tow, towing about the channel, to give way to large steamers to some extent?

A. Well, to a degree, yes; they give way in two senses of the question; a man with a light boat will give way to a heavy tow; a light boat always gives way to a heavy tow, and a small boat generally gets out of a steamer's way coming fast up and down the river.

91 Q. Under the circumstances, don't you consider that it would have been a more prudent manœuvre to pass under the steamer's stern, than to have kept on?

A. It would have been better for us fellows if we had seen each other; they ought to have seen us as well as we did them because they were so much higher up out of the water; the steamer seemed to be more than half light.

Q. Do you decline to give me your judgment as to whether it wouldn't have been better for your steamer to pass under the steamer's stern than to have passed ahead?

A. It would have been better for either to go under the stern—anything would have been better than a collision; but I don't want to pass judgment on them people; they were supposed to be pilots in charge, and I was only engineer.

Q. Did you receive any signal whatever from Captain Winnett from the time you first saw the Delaware until the collision?

A. Yes, sir, before the collision I received a bell.

Q. What was it?

A. To stop.

Q. Did you stop?

A. No, sir.

Q. How far away——

A. Well, it was after I left the engine-room; I received the bell after it was too dangerous for me to go back.

Q. How far off do you think the vessels were then?

A. I suppose it might have been 10 feet apart; I couldn't tell, because I was on the opposite side; but I knew they were going to hit within a second or so at that time.

Q. Did I understand that you thought the pilot-boat had starboarded her helm, and that her head was swinging to port?

A. Yes, sir.

Q. How long was that the case before the vessels struck?

A. That was the last look I took; I was watching the vessel and I looked aft to see if I got any reply before I would pull her open; so I walked out about two steps, and then I got out and grabbed hold of the house.

92 Redirect by Mr. PUTNAM:

Q. Do you know the name of the man who was lost?

A. I only know he was on the boat, and Fred. was his name.

Q. What was his position?

A. Fireman.

Mr. Kirlin reads the deposition of HENRY CRACROFT, taken on behalf of the claimant, as follows:

Q. What is your occupation?
A. I am the third officer of the steamship Delaware.
Q. How long have you served the Delaware in that capacity?
A. Since she left London on the 1st of September last.
Q. How long have you been going to sea altogether?
A. Twenty years nearly; 19½ anyhow.
Q. What position had you filled before you joined the Delaware?
A. For between three and four years I was master of the Rakaia and Hurunui.
Q. What class of vessels are those?
A. They are vessels of about the same tonnage as the Delaware; just over a thousand tons. They belong to the New Zealand Shipping Company; there is one here now.
Q Are they sailing vessels?
A. Sailing vessels, barks.
Q. Had you been officer on sailing vessels before that?
A. Yes, I have been with this New Zealand Shipping Company for the last fifteen years, and I left them to come into steam.
Q. Do you carry a master's certificate?
A. Yes, sir, master's certificate since the 28th of October, 1887.
Q. Where does the Delaware hail from?
A. London.
Q. Do you know what her dimensions are?
A. She is 2,469 tons register, I think.
Q. Do you know approximately what her length and breadth are?
A. Her length is, I believe, 340 feet, that is hearsay; and
93 her beam is about, I suppose 32 feet, or something like that—I couldn't be certain.
Q. Do you know by whom she is owned?
A. By the Delaware Steamship Company, Limited, of London.
Q. Where does she trade, as far as you know?
A. She has never been anywhere but between Berfleet and New York.
Q. What trade does she engage in?
A. She is a tank-boat carrying kerosene.
Q. On the voyage when the collision occurred with the Talisman had you any cargo on board?
A. No, we were in ballast.
Q. What time did you leave the other side?
A. On the 1st of September, at 11.40.
Q. When did you arrive here?
A. At noon on the 16th, we let go anchor off Tompkinsville.
Q. What day did the collision occur?
A. The sixteenth.
Q. What time of day?
A. About four minutes past ten.
Q. Did you take the time?

A. I did.
Q. Where did the collision occur?
A. Just at the entrance of Gedney's channel, by the first red buoy.
Q. How far out beyond the buoy were you at the time of the collision?
A. We were just past it.
Q. Just past the red buoy?
A. The red buoy, yes, sir.
Q. Just inside of it?
A. Yes, sir.
Q. How was the weather on that morning?
A. There had been a thunder storm just passed across, but it was clearing, the rain was easing off, and you could see a long way.
Q. Were you on the bridge?
A. Yes, sir, I was on the bridge.
Q. How long had you been there?
A. I came on the bridge at eight o'clock and took charge until the second mate had had his breakfast, and then he came up and relieved me for my own breakfast at nine o'clock, and I returned at half past.
94 Q. Was the pilot aboard?
A. He was on the bridge at the time when I went up there at half past nine.
Q. Who was directing the navigation then?
A. The pilot was in charge.
Q. How long had he been aboard?
A. Since the night before—at least, not the night before, but the night before that.
Q. The second day before?
A. Yes, sir, the second day before.
Q. Do you know his name?
A. No, I do not.
Q. When you came on the bridge at 9.30 was it raining?
A. Yes, just starting, it was raining slightly.
Q. Did it continue to rain up to the time of the collision?
A. Yes, sir, it had been raining heavier between half past nine and ten o'clock, or shortly after ten.
Q. Was it raining when the vessels came together?
A. Yes, just a little; then it came on heavy again.
Q. What was the first you saw of the Talisman?
A. The first I saw she was about three points on our starboard bow.
Q. Where was your ship then?
A. We were to the eastward of the buoy, the buoy was about one point on our starboard bow.
Q. Had you noticed passing any other buoy before the red buoy?
A. Yes, sir, the bell buoy; I couldn't say where it was, but I heard the bell going.
Q. Did you see it?

A. I saw a buoy, but I don't know whether it was the buoy I heard or not.

Q. What kind of a buoy did you see?

A. It looked like a frame, like a cage buoy.

Q. How long had you passed then before you saw the Talisman?

A. Just about the same time, as near as I can recollect; it might have been a few seconds or a minute, or something like that.

Q. Which did you make first, the red buoy or the Talisman?

A. We made the buoy first, and then looking ahead I saw the Talisman beyond.

Q. Was anybody on the lookout?

A. Yes.

Q. Had the Talisman been reported when you first made her out?

A. No.

95 Q. Was she reported?

A. She was reported.

Q. How soon after you saw her was she reported?

A. I suppose half a minute, or shortly afterwards anyway.

Q. What was the report?

A. The report was "Vessel on the starboard bow."

Q. A vessel on the starboard bow?

A. "Vessel on *on* the starboard bow."

Q. Did you answer it?

A. Yes, sir, I answered.

Q. How far off should you judge that vessel was when you first saw it?

A. Well, between—it was a very deceiving sort of a day, with the rain and all, but I dare say she might have been half a mile or more, perhaps three-quarters.

Q. Did you see any other vessels?

A. I saw the two together.

Q. How close together did they appear to be?

A. Well, you could see the blue water between the two of them.

Q. How was the Talisman pointing with reference to your course, when you first saw her?

A. At right angles.

Q. Coming towards you or going away from you?

A. Coming towards us.

Q. Did you notice whether the pilot-boat had any sail up when you first saw her?

A. Yes, she had her mainsail and foresail, I suppose they call it.

Q. Did you watch the Talisman and the pilot-boat up to the time of the collision?

A. Yes, sir; I was watching them; I was standing by the telegraph waiting for the pilot's orders.

Q. Was he standing by you?

A. He was on the port side of the bridge, half way to the side, and I was standing abreast of the telegraph on the starboard side.

By Mr. WING:

Q. You were on the starboard side and the pilot was on the port side?

A. Yes, sir; about half way across the port side of the bridge, that is, between the binnacle and the dodger.

96 By Mr. KIRLIN:

Q. Did the bearing of the Talisman change on your starboard bow as you continued to watch her before the collision, and if so, how?

A. She was gradually drawing towards us.

Q. Narrowing the angle?

A. Yes, sir.

Q. Did the tug make any signal that you heard?

A. Yes. I heard the whistle three times.

Q. How did she bear off your bow when you heard the whistle?

A. I could hardly say, of course she was getting closer; I didn't take any particular notice of how she was bearing when the different whistles went; anyhow, she was coming towards us all the time.

Q. Was it a short time, or a considerable time, before the collision?

A. The last whistle was just before the collision, and the other ones were—of course time goes—you don't really take much notice in a time like that.

Q. Just describe those whistles—their length and the intervals between them?

A. I should say that they were about two to three seconds, the duration of the blasts.

Q. And the interval?

A. The interval I should say was some few seconds—15 or 20 seconds, something like that; it might have been a little more or less.

Q. As the Talisman and the pilot-boat drew nearer, could you see the towline between them?

A. Yes.

Q. About what should you judge the length of it to be?

A. I should think it was somewhere about 20 fathoms; it might have been more or it might have been less.

Q. Did you watch that line up to the time of the collision?

A. Yes, I watched it during the time of the collision.

Q. Did it slack or get in the water at any time until the collision?

A. No, sir; it was tight until the collision.

Q. How far off do you suppose the Talisman was when you first were able to make out the line?

97 A. I suppose she was two or three hundred yards off—say a couple of hundred yards; it was't like a big hawser, it was about three-inch.

Q. About a ship's-length off?

A. About a ship and a half length.

Q. It didn't slack or get in the water from that time up to the collision?

A. No; it did not.

Q. Was any signal made on the whistle of your vessel?

A. No; none at all.

Q. Was there anybody else on the bridge besides you and the pilot, up to the time of the collision?

A. The man at the wheel was standing inside the wheel-house.

Q. Anybody else?

A. Well, the captain was up there at the time of the collision.

Q. How long before the collision did he come up?

A. About a minute, or something like that.

Q. What orders were given on your vessel to the wheel and to the engine-room before the collision?

A. The first order was to hard-a-starboard the helm and stop the engine, and I put the telegraph to stop, and then I was looking around to see that the man was putting the helm the right way, and the captain, just a second afterwards, pulled the telegraph down to full speed astern—you may say that it was less than a second, for just as my hand was off it and I was looking around to see that the man was putting the helm right the captain pulled the telegraph.

Q. Which was given first—the order to hard-a-starboard or stop?

A. They were just in the same minute.

Q. The orders were then, stop, hard-a-starboard, full speed, and they followed each other immediately?

A. Yes.

Q. Did you look to see whether the helm was hard-a-starboarded?

A. Yes, sir.

Q. How long did it take it?

A. Very little time, because it is one of the biggest hydraulic engines; it doesn't taken any time.

Q. Did your vessel swing under the hard-a-starboard helm?

A. She must have, but I didn't take any notice of her swinging.

98 Q. What was your attention directed to?

A. To the tugboat, and I was at the telegraph waiting for orders.

Q. How long were those orders given before the actual contact of the vessels?

A. About a minute.

Q. Right after the captain came on the bridge?

A. Yes, he had just got up on the bridge and gave the orders.

Q. What speed had your vessel been making just prior to sighting the Talisman?

A. I suppose about 9 knots.

Q. Did you notice whether the speed was checked any under the order full speed astern?

A. Oh, yes, the speed was off the ship.

Q. How much was she making at the time she struck the Talisman, if you noticed?

A. I suppose she was making 3 knots.

Q. Did you notice that the speed was checked down?

A. Oh, yes.

Q. At what angle did the vessels come together?

A. At an angle of 45 degrees.

Q. How far into the Talisman did the bow of the Delaware go?

A. That I didn't see, because I was standing on the bridge—I only heard the noise.

Q. It didn't come out the other side, did it?

A. Oh, dear, no; for she hung across our stern for some little time.

Q. Do you know how the tide was at that time?

A. It was running up, flood tide.

Q. Was there any wind?

A. No, there had been; the wind was very unsteady, sometimes a fresh breeze—it was puffy.

Q. What direction did the wind come from just then?

A. I suppose the wind was from between south and southwest; I wouldn't swear to the exact point.

Q. Did you hear anybody on the bridge of your vessel say anything to those on board the tug when the orders were given on board your vessel?

A. Yes, the captain sung out to the tug "Port."

99 Q. Was the Talisman within hearing distance then?

A. Yes.

Q. Did they answer?

A. I didn't hear them.

Q. Did he sing out more than once?

A. Once loudly, sir; he might have sung out more, but I didn't take notice of it.

Q. Did he make enough noise to reach the Talisman?

A. Yes, I should think so, sir.

Q. Was the line between the Talisman and the pilot-boat dropped at any time before they came together?

A. No, it was tight all the time.

Q. Do you remember how far the Talisman was away when these three blasts were given; how many ship's-length, if any?

A. Yes, when the last one was given she was right under our bow, the others were only just of short duration before, so she couldn't have been a ship's-length off; it was more like half a ship's-length, I should say.

Q. After the collision did you stand by for any length of time?

A. Yes, sir, I suppose about half an hour, something like that.

Q. What became of the Talisman?

A. She sunk.

Q. Did her crew come on board your vessel?

A. Yes, sir, some of them. Captain Winnett and some of the crew got up on the anchor and were pulled up over the bow, and some were saved by our life-buoys (two life-buoys were in the water) and by the dingey belonging to the vessel that was in tow of the Talisman.

Q. How many men in all came aboard your vessel?

A. Six, I think it was.

Q. Were any reported missing?
A. Yes, one.
Q. Was any effort made to find him?
—. Yes, sir, we were searching around amongst the wreckage and the boats; we pulled about there for some time.
Q. And after waiting about half an hour the vessel proceeded, did she?
A. Yes, sir.
Q. Is she now in port?
A. Yes, sir.
Q. When is she going to sail?
A. I don't know, tomorrow, I believe, some time.
Q. Are you going with her?
A. Yes, sir.

100 Q. It is alleged in the libel that the said steam tugboat blew one blast of her whistle which was answered by the steamship with one blast of her whistle; is that true?
A. No, it is not; I was there on the bridge and no one went near the whistle and no one gave any orders about the whistle.
Q. Where was the whistle-cord?
A. The whistle-cord was on the after part of the wheel-house, made fast to the rail, and then there was one end leading over to me.
Q. On your side of the bridge?
A. Yes, sir; and one leading over the other side; but they weren't pulled, because when they are once pulled you have got to shake it up before it will overhaul on the after bow.

Cross-examination read by Mr. PUTNAM:

Q. Where do you reside?
A. In Croydon, England?
Q. And this is your first voyage on this steamship?
A. Yes, sir.
Q. She is an iron tank steamer?
A. Yes, sir.
Q. Carrying refined oil in bulk?
A. Yes.
Q. How old a vessel is she?
A. About three or four months—I suppose about four months.
Q. She is one of the largest of those tank steamers now?
A. Yes.
Q. What is the name of her captain?
A. Captain Thomas.
Q. And you had officers and crew all told, how many?
A. Forty-two, I think, all told, sir.
Q. How many in the navigation department?
A. Well, there are three officers and the captain.
Q. That is all?
A. Yes, sir.
Q. And in the engineer's department, how many?
A. There are four engineers and the boiler-maker.

Q. How many in the steward's department?

A. That I couldn't tell you, sir; I am not well up in that sort of thing; I have only been aboard of her a short time and I don't come in contact with them at all.

Q. Do you know the length of that boat?

101 A. Well, I was told it was 340 feet, but I haven't seen it on anything official.

Q. How many decks has she?

A. Well, of course, all the centre part are tanks right down, but there is what they call the expansion, which forms a kind of between-deck, and then what they call the between-decks alongside of the expansion.

Q. Her cabin is aft?

A. The engineer's cabin is aft, and the officers' and captain's amidships on the main deck.

Q. Are there any houses on deck?

A. There is a house aft on the poop and then the chart-house that is above our cabins amidships, and then there is the wheel-house above that again on a level with the upper bridge.

Q. So that standing aft you can't see forward over the bow?

A. Not standing—of course the poop is raised; you can't see over the bow, but you can see out clear of the bow.

Q. Has she any sheer to her?

A. Yes, sir.

Q. A good deal?

A. Well, no, not so very much.

Q. Is she a flush-deck tank steamer?

A. A topgallant forecastle and a poop.

Q. So that they interfere with any one aft of those seeing over the bow?

A. Yes, close over the bow.

Q. How many masts has she?

A. Three.

Q. And she has but one bridge?

A. She has two bridges, a lower and upper bridge.

Q. Directly over each other?

A. Yes; the lower bridge is formed by the top of the deck, where our cabins are underneath.

Q. How high is the lower bridge from the deck?

A. I suppose it would be nearly 10 feet; I have never measured it, but I should think it was.

Q. And how high is the upper bridge?

A. That would be about the same height.

Q. The upper bridge is about 20 feet above the deck?

A. Twenty feet above, yes, sir.

Q. And runs from side to side?

A. From side to side.

102 Q. Did you have weather awnings up over the upper bridge?

A. Yes; but so that you can see over them.

Q. And you and the pilot were the only men on that upper bridge?

A. No; there was the man at the wheel; he was in the wheel-house, which is flush with the upper bridge.

Q. Well, you and the pilot and the man in the wheel-house were the only men on the upper bridge until the captain rushed up there just before the collision?

A. Yes.

Q. Is his room below the lower bridge; right under the lower bridge?

A. Yes, his own private cabin is, but, of course, there is the chart-house and the smoking-room.

Q. You don't know where he had come from when he came up on the bridge, do you?

A. No, I couldn't say that; but I know that very little previously he had spoken to me from the deck.

Q. Was he at breakfast with you?

A. He had had his breakfast; the second mate relieved me after the captain and the first and second officers had had their breakfast.

Q. The regular watch terminated at 8 o'clock that morning?

A. Yes, the mate's watch terminated at 8 o'clock; I relieved him at 8 o'clock.

Q. Were you in the second officer's watch?

A. No, I keep watch myself; we have three watches.

Q. And you were on the bridge from 8 o'clock until 9 that morning?

A. Yes.

Q. Was the pilot there with you?

A. Most of the time, with the exception of just two or three minutes when he ran down and had a cup of coffee at breakfast time.

Q. Did you notice what the course of the steamship was from 8 to 9 that morning?

A. Well, no, I can't say that I noticed particularly what the course was, because the pilot was in charge and he was giving orders.

Q. And as long as he was in charge you didn't have any responsibility about it?

A. No, no.

103 Q. Do you know where the ship was at 9 o'clock that morning when you left the bridge and went below to get your breakfast?

A. No, I couldn't say exactly where she was, because this is the first time that I have been to New York, and I am not well acquainted with the——

Q. Bearings and surroundings?

A. Yes.

Q. Did the pilot go down for his coffee before you left the bridge at 9 o'clock?

A. Yes, he just went down and got his coffee and came back again.
Q. That was before 9 o'clock?
A. That was before 9 o'clock.
Q. Then at 9 you left the bridge and went down where?
A. I went and got my breakfast down in the cabin.
Q. That is right under the bridge?
A. Right under the bridge; right underneath the lower bridge.
Q. Was any one there with you at breakfast?
A. No, I was there by myself, the steward was attending on me, that is all.
Q. And you came back about half past nine and went up on the bridge again?
A. Yes, and relieved the second mate.
Q. Now, from the time that you went on the bridge at half past nine up to the time of the collision, did you look at the compass of your vessel at all?
A. No, sir, the pilot was giving the orders.
Q. So that you don't know what her compass course was?
A. No, I wouldn't be certain of that, because of course I was just watching the pilot and he was giving his orders; if he gave "port" or "starboard" I gave them to the man at the wheel, and so on.
Q. The man at the wheel was whom?
A. Peyton is his name, quartermaster.
Q. Do you remember when he went to the wheel?
A. Yes, he relieved the wheel at 10 o'clock by the wheel-house clock; it was 10 minutes to 10 that he relieved the wheel.
Q. So that he was at the wheel about fourteen minutes before the collision?
A. Yes; well, yes, sir; he didn't come up exactly on the stroke of the bell, but it was within a minute or two afterwards.
104 Q. And that was by the time on your ship?
A. That was by the wheel-house clock.
Q. Do you know the name of the man that he relieved?
A. Gleason, I believe.
Q. Are both Gleason and Peyton here?
A. No, Peyton is here.
Q. Is Gleason on board the ship?
A. I believe so, sir.
Q. But Peyton is here?
A. Peyton is here, the man that was at the wheel.
Q. Is the compass right before him at the wheel?
A. Yes, the steering compass, as we call it.
Q. He has no difficulty in seeing the compass?
A. No, he has got the compass in front of him.
Q. And the vessel steers by steam?
A. Yes, sir.
Q. It is a small wheel?
A. Yes.
Q. And it takes but two or three seconds to put it from hard-a-port to hard-a-starboard?

A. Yes.
Q. And does she mind her helm quickly?
A. Yes, sir.
Q. Good steering vessel?
A. Yes, sir.
Q. You were light coming in, no cargo in?
A. No, we had got some water ballast.
Q. Do you know how much water she drew that morning?
A. I couldn't say at the time of the accident, because we pumped out some when the draught was taken when we were coming up into the dock here.
Q. Did you pump out some before the collision?
A. I don't know about that morning, but we had to dry the tanks out.
Q. But you were pumping as you approached the coast?
A. As we were going up the river.
Q. Do you know what water she drew before the collision?
—. No, I couldn't say; I know that she was drawing when we came into the dock.
Q. How much?
A. 10 feet 3 inches forward and 16 feet 6 inches aft.
Q. She isn't as much as that by the stern, is she, on a voyage?
A. No.
105 Q. You got a little more out forward than you had aft?
A. Yes—I don't really know; I myself don't have anything to do with the tanks that are pumped out or anything like that.
Q. But prior to the collision she was on a pretty even keel, was she not?
A. I suppose so, I couldn't say what her draught was.
Q. She would be if the water was fairly distributed after you left port?
A. Yes, but I don't know what it was leaving London either.
Q. Did she have bulwarks?
A. Yes, sir, she has short pieces like iron rails in the gangways.
Q. Do you know how far out of the water the top of her bulwark rail was; in other words, what was the distance between the top of her rail and the surface of the water?
A. I wouldn't like to say, because I could not with any accuracy.
Q. She stands out of the water pretty well, doesn't she, if she isn't loaded?
A. Yes.
Q. She has compound engines, has she?
A. I know nothing about her engines.
Q. Do you know what her full speed is?
A. No, I don't know.
Q. But her average full speed is about 9 knots?
A. Yes.
Q. Now, you said there was a man on the lookout; what was his name?
A. Underwood.

Q. Is he here now?
A. Yes, sir.
Q. Where did he stand on the lookout?
A. Right on the bow.
Q. Abaft the forecastle deck?
A. Oh, no, he was on the forecastle head, right up in the eyes of her; right up against the stem-head.
Q. Do you know when he went there?
A. He went there about half past 9, I suppose; it was shortly after; perhaps I gave the order for him to go, but I won't swear to the exact time.
Q. Whose watch was he in?
A. I think he was in the mate's watch, that is to say, in the port watch, of course, being in three watches, the crew are only in
106 two watches, men in the forecastle, so really I am not certain whether he was in the port or starboard watch, because sometimes I am on deck with one watch and sometimes with the other.
Q. You say you called for him?
A. Yes.
Q. Whom did he relieve?
A. He didn't relieve any one; he went up there because it was beginning to come in like rain, and so I sent him there.
Q. No one had been there prior to his being there that morning?
A. Oh, yes, there had been some one there till—I couldn't say exactly what time the man was taken off the lookout, but there had been a lookout that morning.
Q. But there was no lookout from 8 o'clock that morning up to half past 9 when you called this man to go there?
A. No.
Q. Did you notice the time by your clock when you called for this man?
A. No, I did not.
Q. When you speak of the time that you went there, what is your judgment as to the time?
A. I know it was somewhere about half past 9.
Q. It was after you had had your breakfast and came up, but how long you don't know, except by judgment?
A. Wait a minute, I wouldn't commit myself to say whether it was just before I went down or just when I came up from there, but I fancy it was when I came up from my breakfast.
Q. You fancy it was, but you won't swear to it?
A. No, I won't take an oath.
Q. Did he continue there until the time of the collision?
A. Yes.
Q. Didn't he run aft before the collision?
A. No.
Q. Were you watching him?
A. I could see him while I was attending to my work.
Q. You had your eye on this tug and towboat, did you?
A. Yes, sir, I was looking from one to the other as you may say, watching everything, the pilot and the tugboat and all.

Q. And you were the first man that saw this tug and pilot-boat?
A. Yes, I suppose I was.
107 Q. And you were on the starboard side of the bridge?
A. On the starboard side of the bridge, yes.
Q. How far is that bridge from the stem-head?
A. I suppose about 90 to 100 feet; something of that sort; that is my best judgment.
Q. You never measured it?
A. I never measured it.
Q. And the widest part of the ship is there at the bridge?
A. Yes, I should think so.
Q. Was this lookout standing still at the stem-head?
A. He was just moving about a little.
Q. But stationary most of the time, looking ahead?
A. Yes, he was looking ahead.
Q. He made a report, you say, after you had seen the Talisman?
A. Yes.
Q. And his report was what?
A. "Vessel on the starboard bow."
Q. Did you respond to that?
A. I did; my answer was "Aye, aye," to let him know that he was heard.
Q. And this tug was then, you say, three points on your starboard bow?
A. Yes, about three points; it might have been a little more.
Q. Heading across your course?
A. Yes, heading across our course at right angles.
Q. And she kept right on that course up to the time of the collision?
A. Yes.
Q. Did the lookout ever make any other report, except that one?
A. No, sir; not that I heard.
Q. Do you remember whether he made any report that morning from the time when he went on the bridge at half past nine up to the time of the collision, except this one?
A. No, I don't think he did, because it is no use them reporting anything that is noways going to endanger the ship.
Q. You mean anything that isn't in the way?
A. Yes.
Q. When you have spoken of seeing buoys, you don't know what buoys they were, do you?
A. No, but from what I can understand, it is the entrance to the Gedney's channel.
108 Q. That you understand from hearsay since your arrival?
A. Yes.
Q. But you don't profess to be familiar with the navigation of Gedney's channel, or the buoys in it?
A. No.
Q. Did you see about how fast this tug was going with this pilot-boat?
A. No, I couldn't form an idea what her speed was.

Q. She was going very slowly?

A. She couldn't have been going very fast.

Q. When you first saw her she was over half a mile, perhaps a mile, distant?

A. Yes, she was between half a mile and three-quarters—of course a morning like that, when there is rain, clearing off, and a thunder storm just before, the distance is deceiving.

Q. Were you watching her all the time?

A. I was.

Q. And she was not hidden from your vision from the time you first saw her till the time of the collision?

A. No.

Q. Did the pilot come over to your side of the bridge?

A. He came over when I reported the buoy, and you could just see the vessel at the same time. He had given me orders to look out for a buoy, and I told him as soon as I saw it.

Q. Was that before you had seen the tug?

A. It was just about the same time, just when I got sight of the buoy I got sight of the tug.

Q. Did you call his attention to the tug and tow?

A. I said like that, "There's a buoy, sir, and a vessel;" I won't swear that I drew his attention separately to the vessel, but they were both in sight at the same time; the buoy was the principal thing that I called his attention to.

Q. The buoy was what you were giving your attention to?

A. Yes, and vessels, and that sort of thing I saw at the same time.

Q. Did the pilot come over to the starboard side of the bridge at any time after that?

A. No, I don't think he did; he came over perhaps as far as the bridge compass, which is just amidships.

Q. But no farther than that?

A. No.

109 Q. Did he say anything to you before the collision?

A. No, he gave me no orders.

Q. And you had no talk with him before the collision other than this coming over and remarking whether he saw the buoy?

A. That is all.

Q. You say you heard three whistles from the tug?

A. Yes.

Q. And the lookout didn't make any report of those whistles?

A. No; I didn't hear any report.

Q. And you say the steamer was how far off from the tug when you heard those three whistles?

A. The steamer was—I don't know; I should say the first whistle was when she might have been the length of the ship.

Q. She might have been farther?

A. No, I don't think she was farther than that.

Q. The length of your ship?

A. Yes.

Q. Had the pilot given any orders or done anything prior to that?

A. No.

Q. When that first whistle was blown, the tug being the length of your ship ahead, did the pilot then give any order?

A. No, the first orders I got were from the captain.

Q. The first orders you got were from the captain?

A. Yes.

Q. And that was a few seconds before the collision?

A. I don't know; it was maybe a minute before the collision.

Q. He came running up on deck, and what was his order?

A. Stop. Hard-a-starboard.

Q. And that was the first order that had been given on the ship?

A. Yes.

Q. Did you execute those orders?

A. Yes; I put the telegraph stop, and turned around to see that the men was putting the helm the right way—starboarding the helm—and while I turned around the captain took hold of the telegraph and rung off full speed astern.

Q. That telegraph was right in the centre of the bridge?

A. No; it was about four or five feet to the starboard side of the centre line.

110 Q. So that you walked from the starboard rail?

A. No; I was standing at the telegraph at the time the captain came up.

Q. And you put your hand right on the telegraph?

A. I got my hand on the telegraph waiting for orders, and as soon as he said stop I pulled to stop; and then I took my hand off to see that the men was starboarding the helm, and the captain took hold of the telegraph and pulled it to full speed astern.

Q. How long after you had executed those orders was it that you heard the second whistle from the tug?

A. Oh, I suppose it was directly after.

Q. Well, it was after the order was executed?

A. It was while it was being done.

Q. You are sure you hadn't got the orders executed before that second whistle came?

A. Well, don'- know; I wouldn't swear to that.

Q. Then, did the three whistles come after that?

A. Yes.

Q. How long?

A. Well, some few seconds.

Q. Was there a longer interval between the second and third whistles than there was between the first and second?

A. I don't know; that is a difficult question to answer.

Q. Well, I only want it so far as you recollect.

A. I don't know; I don't think there was; I think there was almost more between the first and second than between the second and third.

Q. There was more of an interval between the first and second than between the second and third?

A. Of course I didn't time them, and at a time like that a man can't exactly keep these things in his head to a second, the duration.

Q. And you, of course, began to get excited?
A. No; I am not a very excitable nature; I was standing there.
Q. Didn't it surprise you a good deal that the pilot didn't give any orders?
A. I was waiting for them.
Q. Weren't you astonished at not getting any?

Objected to.

111 A. I was there as a junior officer, and although I might have had my own thoughts about it I wouldn't say anything.
Q. Was anything the matter with the pilot that morning?
A. No; the pilot was sensible, and everything.
Q. He never spoke a word to you?
A. No.
Q. Did he say anything to the captain or the captain to him after the captain came up?
A. I believe the captain may have spoken to him, but I couldn't hear what he said to him; I wouldn't answer to what he said.
Q. Going as you were that morning at nine knots, before the collision, with water ballast, as you had it, how long would it take to stop the ship?
A. That is a question for the engineer.
Q. Well, what is your judgment about it?

Objected to unless the witness has observed or experimented with it.

By Mr. KIRLIN:

Q. Have you tried how long it would take to stop the ship from going full speed ahead?
A. No, I have not.

By Mr. WING:

Q. You say at the time of the collision she was stopped?
A. No, I do not; it was rung up full speed astern on the ship, but I don't say that the ship was stopped.
Q. How fast was she going at the time of the collision?
A. Well, I didn't heave the log; I should say, as near as I could judge, about 3 knots, or it might be 3½.
Q. So that is your judgment, that from the time the captain appeared and gave that order to you until the collision, the headway of the ship was reduced from 9 knots to 3½ knots?
A. Yes, sir.
Q. The tide was with you?
A. I believe it was flowing.
112 Q. You don't know what time it was high water that morning?
A. No; I do not.
Q. Do you keep a scrap log?
A. It is in the chart-room, so that the officer that has been on deck, when he is relieved goes down and puts down his report.

Q. And did you go down and put the entry in this scrap log in regard to this collision?

A. Not until after we let go the anchor.

Q. Then you did?

A. Then I did.

Q. And that scrap log you have?

A. That scrap log I have.

Q. Will you produce it?

A. I suppose the mate's log is just exactly the same; it is a copy of it.

Q. Well, I would like to have your scrap log, as well as the mate's log of the ship; will you produce it?

A. Yes, sir.

Q. There was no one forward on the ship except this one lookout at the stem-head, you and the pilot and the man at the wheel and the captain when he came up on the bridge?

A. That was all.

Q. You saw nobody else forward of the bridge before the collision?

A. No, I don't think there was; there might have been down in some of the tanks; there might have been men forward.

Q. They would have to look out through the——

A. Well, they couldn't see. Of course there were men in the top-gallant forecastle.

Q. The steamship sustained no damage?

A. Not that I know of; I haven't heard of any being reported.

Redirect by Mr. KIRLIN:

Q. How many seamen are there in the crew?

A. Six each side, twelve altogether.

Q. Does that include the carpenter and quartermaster?

A. No, that doesn't include the carpenter or the boatswain.

Q. That would be fourteen then, including them?

A. I think so, sir.

Q. Just before you saw these vessels what had the pilot said to you about buoys?

A. He told me to let him know as soon as I saw a buoy.

Q. Did he mention any color?

A. Red buoy.

113 Q. Had you seen any red buoy that morning previous to the one you saw about the time you saw the Talisman?

A. No.

Q. Had you seen any buoy except the cage that you spoke of?

A. No, hadn't noticed any.

Q. Can you form any judgment as to how long it was from the time you first saw the Talisman until the collision?

Objected to that he has already answered that.

A. Yes, I should say it was between 5—likely 6 minutes.

Q. Did she appear to be steaming when you first saw her, or couldn't you tell?

A. Well, I could hardly tell just at first, but I could see blue water between the two.

Q. I will put it this way: Did the distance between the vessels become greater at any time after you first saw them, than it was when you first saw them?

A. It seemed to, but it might have been the angle changing; the distance seemed to be further apart.

Mr. Kirlin reads deposition of EDWARD DOWBIGGIN, taken on behalf of the claimant, as follows:

Q. What is your age?

A. 40.

Q. What is your present position?

A. Second mate of the steamship Delaware.

Q. How long have you been with her?

A. Three months and a half.

Q. Did you join her when she was new?

A. Yes, I joined her new.

Q. Have you been in the employ of this company before?

A. No, not previous to that.

Q. What was your watch on the morning of the collision between the Talisman and your steamer; between what hours?

A. Between midnight and 4 a. m.

Q. When did your next watch begin?

A. At noon.

114 Q. Were you on the bridge at any time between 4 o'clock and noon?

A. Yes, I was up there for a little while, while the third officer got his breakfast.

Q. Do you remember when that was?

A. It was some time between a quarter past 8 and a quarter to 9 I think.

Q. Do you know what time you passed Sandy Hook lightship that morning?

A. We were coming up to it just when I went down.

Q. What time was that?

A. I should think it would take us a quarter of an hour to get up there.

Q. Then you passed it about nine o'clock?

A. About nine I think.

Q. Where were you at the time of the collision?

A. On the after deck.

Q. Did you see the Talisman at any time before the vessels were in contact?

A. I didn't see her at all until she was submerged.

Q. Were you on deck, say 15 minutes preceding the collision?

A. No, I went down to my room and was there a few minutes and then came on deck.

Q. How long had you been on deck just before the vessels came together?

A. I don't know when they came together; I never felt anything of it.

Q. You saw the men coming alongside in a boat?

A. Yes, I saw the men in the water.

Q. How long had you been on deck before that?

A. At the least, five minutes.

Q. Can you hear the steamer's whistle when you are in your room?

A. Oh, yes, if I am awake.

Q. Were you asleep that morning?

A. Oh, no, no.

Q. Did you hear the steamer's whistle at any time just before the collision?

A. I don't remember hearing it.

Q. You say you saw the men in the water; which side of the vessel did you see them?

A. The starboard side.

Q. Did you see them picked up?

A. I did.

Q. Did you put over any life-buoys?

A. I didn't actually throw them over, but I had them put over.

Q. And the men with the help of the life-buoys came alongside the vessel?

A. Yes, sir.

115 Q. Which side?

A. The port side, around the stern.

Q. How did they get up over the side?

A. I put a ladder down.

Q. Were any members of the Talisman's crew alongside you while you were putting the ladder down and helping the men up?

A. Yes, the engineer and I think a man named Jim—I think that is what they called him.

Q. How do you know the other man was the engineer?

A. He said so.

Q. What was his appearance?

A. He was rather above the medium size I think, with sandy complexion, red moustache and sandy hair.

Q. Had he been in the water?

A. No, I think not, he got on our anchor.

Q. Did you hear him say anything to the men in the boat?

A. Yes.

Q. While they were still in the boat?

A. Yes.

Q. What did he say?

A. He called down to them about the fireman, saying he was laughing when the ship was coming up, and he says, "This is no laughing matter; you go and get the rope, and I opened her out; we rushed to the levers and opened her out full speed."

Q. These were his words to the men in the boat?

A. Yes.

Q. Did they have the fireman in the boat?

A. No.

Q. What else did he say, about the rope more especially?
A. He said that the fireman, instead of cutting or letting go the rope, held on to it, as far as he knew.
Q. Did you hear him say anything to them about what his intention was in opening up the levers?
A. To get across the bow.
Q. Did he say anything as to whether his action in opening up the levers was in accordance with or contrary to his orders from the captain?
A. He got no orders; he said he did it on his own responsibility.
116 Q. Did you have any further conversation, or hear any further conversation with or between any members of the Talisman's crew?
A. No.

Cross-examination read by Mr. PUTNAM:

Q. Where do you reside?
A. At Liverpool.
Q. Do you have a home there?
A. Yes.
Q. What is the street and number?
A. 267 Park road.
Q. You have a family there?
A. No, I live there with my mother.
Q. How long have you been second officer of this steamship?
A. One voyage.
Q. This is the first voyage that you have been second officer?
A. Yes, sir.
Q. You joined her in London?
A. I joined her in Greenwich in June; I have been three voyages in the ship—two as third officer and this one as second officer.
Q. Has she had any other collision than this since you have been with her?
A. The last voyage we had a slight collision with a schooner.
Q. Where was that?
A. Somewhere between here and Nantucket Shoal lightship.
Q. Did you sink the schooner?
A. No, sir; scarcely damaged her.
Q. No suit pending about it?
A. I couldn't tell you.
Q. Was it in a fog?
A. Yes, sir; in a fog.
Q. Was that the last voyage going home?
A. The last voyage going from here.
Q. Was it during your watch?

Mr. KIRLIN: I object to all this testimony about the other collision, as immaterial. If it is pursued very far it will make it necessary to go into counter-evidence and try that case, whereas no action is pending.

A. It was.

Q. Your watch the morning of this collision terminated at four o'clock?

A. Four a. m., yes, sir.

117 Q. So that you had nothing to do with the navigation of the ship after that?

A. Nothing at all.

Q. Now this conversation that you say you heard by some men in the boat was after the collision?

A. After the collision, yes, sir.

Q. And the man in the boat was speaking to some man in your ship?

A. Yes—no, the man on our ship was talking to the men in the boat.

Q. Who was in the boat?

A. Two sailors who had been picked up out of the water.

Q. Two sailors from the tug?

A. Yes, sir.

Q. You don't know their names?

A. No.

Q. Was anybody else in the boat except those two sailors?

A. Two men who were in charge of the boat.

Q. It was the pilot's yawl?

A. Yes, sir.

Q. And there were two pilot's men and two men from the tug?

A. Yes, sir.

Q. But the name of either one of those four men you don't know?

A. No.

Q. And this talk was made by this man who stood on the deck, whom you took to be the chief engineer?

A. Decidedly.

Q. Was anybody on the deck there with you except you and he?

A. Oh yes, the carpenter and the lamp-trimmer and several other men.

Q. Of your ship?

A. Of our ship, yes sir.

Q. They stood right around together?

A. Yes sir, waiting to receive the men when they came up the ladder.

Q. Was "Jim" there from the tug?

A. Yes, he had come over the bow.

Q. Will you give us that conversation word for word, just as it occurred; this man whom you took to be the chief engineer, did he speak first?

A. He hailed the boat first on the port side, abaft amidships, between amidships and the stern; it was coming into the ladder. He asked who they had got, who they had picked up out of the water, and they told him.

Q. Who spoke then?

118 A. Some man in the boat answered, telling him "There's me and so and so here" whatever the names were.

Q. Well, what did he say?

A. "There is I and so and so"——

Q. Who did he say was "I"?

A. I don't know who "I" was; "I" was "I" I suppose.

Q. Did he say "I and so and so is here"?

A. He said "I" and mentioned the other men's names.

Q. What were the other men's names?

A. I don't know; "I and" (giving the men's names which I don't remember) "are here."

Q. What did this other man say?

A. The man in the boat says "Who have you got on board" and he made answer that "the captain and I and Jim are here."

Q. Then what was done next?

A. Then he said, I think it was "Gus," I am not sure——

Q. Who said this?

A. The engineer said "Then Gus is missing." I think it was Gus.

Q. And then what was said?

A. Well, the engineer said that the last he saw of him he was by the rope.

Q. The man in the boat said so?

A. No, the engineer—"The last I saw him he went to cut (or let go) the rope" I am not sure which, "but instead of cutting it he held on to it, and that is how he got drowned" he says, "I rushed to the levers and opened her out at the same time."

Q. Was that all he said?

A. I think that is all.

Q. Did the other man in the boat make any reply to that?

A. No, I don't think he called up anything.

Q. So that this man whom you term the engineer made this speech from the deck of your ship to the men in the boat that were being pulled up alongside of your ladder?

A. Yes.

Q. And before they got out of the boat onto the ladder to come on deck?

A. Yes sir; of course he had some other conversation with the men besides this, asking them to pick up his waistcoat as his license was in the pocket.

Q. That, you don't remember?

119 A. Yes, he asked him to pick up his waistcoat so that he could get his license.

Q. But I asked you to give me all the conversation that took place between that man and that boat?

A. He says "See if you can pick up my old vest as my license is in it." "Oh" says the man in the boat "you can get another license." "Yes but there is something else there besides the license" says the other fellow.

Q. Was this before or after he had spoken about the engine and the cutting of the rope?

A. After.
Q. That concluded the conversation?
A. That concluded it, yes sir.
Q. Was Captain Winnett of the tug there?
A. I hadn't seen him there; directly after that I went on to the lower bridge and the captain was bathing his arm in a basin of water he had there.
Q. His arm was broken.
A. Yes, I suppose it was broken.
Q. You had no conversation with the men there, with this engineer and the men in the boat?
A. Not with anybody.
Q. You didn't take any part in the conversation?
A. No.
Q. And you have given all the conversation that took place?
A. All that I heard.
Q. Did you make any memorandum of the conversation?
A. No.
Q. So that what you give us is from your memory alone?
A. My memory alone.
Q. Have you talked it over with anybody?
A. No.
C. Hav-n't you been to this office before today and made any statement in regard to the conversation?
A. I have, yes.
Q. How many times?
A. Once.
Q. Was the captain of the steamer here with you?
A. No.
Q. Who was here beside you?
A. The 3d officer was here besides me.
Q. Have you ever told the captain about this?
A. No.

120 Mr. Kirlin reads deposition of RICHARD UNDERWOOD, taken on behalf of the claimant, as follows:

Q. What is your age?
A. I am 25.
Q. What is your position on the steamship Delaware?
A. Able seaman.
Q. How long have you been on board of her?
A. I have been in her 22 days.
Q. Just this last voyage?
A. Yes, sir.
Q. Shipped in London?
A. Shipped in London.
Q. How long have you been going to sea?
A. Ten years going to sea?
Q. Were you on deck at the time of the collision between the Delaware and the tug?
A. Yes.

Q. Where were you standing when the vessels came together?
A. Looking out of the stem, on the lookout.
Q. What time did you go on the lookout?
A. Half past nine.
Q. The collision occurred at about what time?
A. About five minutes past ten, as near as I could guess.
Q. You had been on the lookout for about half an hour or a little more, had you?
A. Yes.
Q. What had you been doing before that on that morning?
A. I was cleaning the tanks out.
Q. Do you know where the vessel was when the collision occurred?
A. She was about between two and three points on the starboard bow.
Q. Whereabouts in the water of the harbor was it?
A. In Gedney's channel.
Q. What was the first you saw of the Talisman, and how did she appear?
A. She appeared between two and three points on the starboard bow.
Q. How far off did you see her?
A. A. I should think a mile.
Q. Did you see the schooner at the same time?
A. No, I did not.
Q. Did you see the schooner shortly afterward?
A. Yes, I seen the schooner. It was misty at the time.
121 Q. What was the condition of the weather that morning?
A. Thick and rainy.
Q. How near together did the vessels appear to be when you first made out the Talisman?
A. She had a drift of about an 11-fathom tow, as near as I could guess.

By Mr. WING:

Q. The tug did?
A. Yes, sir.

By Mr. KIRLIN:

Q. How was the tugboat bearing with reference to your course when you first saw her?
A. About two points and a half from the bow.
Q. Was she coming toward your course?
A. Appeared to be coming straight for us; tried to cross our bows, as it seemed to me.
Q. Did you report the vessel?
A. I reported a vessel ahead.
Q. Do you remember the words of your report?
A. No. I have made a mistake there. "A vessel on the starboard bow," I reported.
Q. Did you report it as soon as you saw it?

A. I did.

Q. Did you get an answer?

—. Yes; I had an answer.

Q. From whom?

A. From the third officer, I think.

Q. From Cracroft?

A. Yes; also the watch. I wouldn't say he was on watch at the time, you know, because I couldn't say.

Q. During all the time that you had been on the lookout you had been standing up there on the stem-head?

A. Not on the stem; I told a lie there. I was looking over the stem; it was rainy.

Q. You remained on that forecastle head, right by the bow, until the collision?

A. Until the collision, yes.

Q. Did you watch the Talisman all the time?

A. I watched all the time.

Q. Did you make any further report of her?

A. No; it was pretty clear then; just a few yards from the collision; we could see.

122 Q. How did the Talisman continue to bear with reference to your vessel? From the time you saw her up to the collision, what direction did she appear to be going in?

A. She appeared in the direction from us to be coming straight for us, as though heading towards us.

Q. You mean across your bow, do you?

A. Yes.

Q. Did you hear any signal by whistle from the tugboat before the collision?

A. No; I didn't hear anything.

Q. Did you hear any sound of your own whistle, the whistle of the steamer?

A. No; I don't think our vessel whistled at all. I didn't hear it, anyhow.

Q. Is it a loud or a soft whistle? Can you hear it on the bow when it is blown?

A. I would have heard it. It is a very good whistle. If it had blown I should have heard it.

Q. You don't remember of the tugboat's whistling at all?

A. I don't know whether she whistled at the time of the collision; yes, she did whistle at the time of the collision; but I couldn't say how many blasts, whether it was two or three.

Q. That was just before the vessels came together?

A. Just before the vessels struck; yes.

Q. How long do you think it was from the time you first made out the Talisman until they came together?

A. Four or five minutes, I should think.

Q. Did anybody else come up forward on the forecastle head where you were until the vessels came together?

A. No, no one at all; I was there all by myself all the time I believe.

Q. Did you remain there after they struck?

A. I remained there after they struck.

Q. Did anybody come up over the bow?

A. Yes, I put a couple of ropes out as soon as she struck, and I landed three men up out of the bow, three, yes.

Q. What became of the Talisman?

A. She sank immediately.

Q. Under the bow?

A. Just on the port side; she heeled over to the port side and then she went down with the stern.

123 Q. Did your vessel have headway on; did she pass on over her?

A. No, she didn't pass over her.

Q. How far into her did she go?

A. She struck her on the quarter, right fair on the quarter and she filled up afterwards and heeled around, filled up and sank.

Q. What speed do you suppose your vessel was making when you struck her?

A. At the time we struck her she wasn't making any speed at all; she was stopped, or the vessels was stopped at the time.

Q. Did you look down and see your vessel at the time of the collision?

A. Yes, sir.

Q. How far in did the bow of the Delaware go, how far into the Talisman?

A. It didn't go very far in; just struck her and they kept together you know at the time and of course she smashed up in the stern, she filled up and heeled around and sank.

Q. Did the Talisman seem to be steaming when you first saw her?

A. Yes, she was steaming.

Q. Could you judge about what rate she was making?

A. I should judge, as near as I could tell, about five or six knots.

Q. Could you see the hawser between the two vessels at any time before the collision between the Talisman and her tow?

A. Yes, I could see the hawser.

Q. How far off?

A. Oh, when she came close to us I could see the hawsers; not at a distance of a mile I couldn't.

Q. Could you see it a ship's-length away?

A. Yes, I could see it a ship's-length away.

Q. Was it in the water or above, tight?

A. It was tight—it was a little slack.

Q. Was it in the water?

A. Yes, I think it was in the water. *A.* How far off do you mean, do you mean a ship's-length away from the ship?

Q. Yes, from the Talisman.

A. Oh, yes; it was hanging in the water, slack.

Q. Did the Talisman and the pilot schooner keep their relative positions right up to the collision, did the Talisman appear to keep on towing or not?

A. Yes, she kept on towing up to the collision, and then the schooner—well, I didn't see any more.

124 Q. Could you tell whether they stopped and reversed, whether the Talisman reversed her engines?

A. No.

Q. Do you mean you couldn't tell?

A. I couldn't tell now.

Q. Did she seem to check her speed any?

A. No, I don't think so; she was going full speed at the time of the collision?

Q. Are you going away with the ship on the return voyage to England?

A. That is a very hard thing to say; I go to the southward in the winter time to clear the winter. No, I don't suppose I shall make another voyage on her; I might of course. I couldn't tell.

Cross-examination read by Mr. PUTNAM:

Q. You haven't been paid off yet?

A. No, sir.

Q. How much is owing you?

A. Now?

Q. Yes.

A. Oh, I have got nothing to come now, a few shillings, that is all.

Q. Didn't you sign articles?

A. I did.

Q. What was the voyage?

A. The voyage was London to New York and final port of discharge.

Q. Was the voyage to be up here?

A. No, United Kingdom.

Q. So that you have signed articles to go back in her?

A. Oh, yes.

Q. And you expect to go back in her?

A. I expect to.

Q. Are you living on board of her now?

A. Yes. On board of her now.

Q. Where do you hail from?

A. I hail from London, sir, city of London.

Q. Have you a home there?

A. Yes, I have a good home there, sir.

Q. Any family there?

A. No, there is my mother and father you know, that is all.

Q. What is your age?

A. 25, sir.

Q. Did you join the ship there in London?

A. I joined the ship in London; yes.

Q. And came out with her on this voyage?

A. And came out with her on this voyage.

Q. Had you ever been on one of these tank steamers be-
125 fore?

A. Yes; I have been on all kinds of ships, sir; I was in the Weehawken oil-tank steamer, last September I think it was when I was in her.

Q. Do you understand English very well?

A. Yes, I have had a very good education only I have been to sea all the time and never followed myself up.

Q. What is your height?

A. Well, it is a long time since I have measured me; I couldn't exactly tell—5 feet 4, I believe.

Q. You are a short statute, aren't you?

A. Yes.

Q. How is your eyesight?

A. Very good sight.

Q. Have you ever been examined?

A. Yes, I have been examined for the naval reserve.

Q. Had your eyesight examined?

A. Yes, but I was not tall enough.

Q. So you weren't accepted?

A. I wasn't accepted.

Q. Was any test made of your eyes?

A. Yes.

Q. Do you know what the result of that test was?

A. I don't know; I have a testimonial here I believe—it is not here, but I had it; I had a small testimonial—I was to go on a certain ship on the Orient Line S. S. Co. to sail from London to the colonies.

Q. You haven't answered my question whether your eyes were examined?

A. Yes; I had a testimonial to prove that my eyesight was good.

Q. And that was how many years ago?

A. That was about 16 months ago.

Q. Whose watch were you in on this ship?

A. I was in the port watch.

Q. When did your watch commence that morning?

A. I can't remember now. Our watch on deck would be from 8 till 12; yes, quite right, 8 till 12.

Q. When did you go on watch?

A. I went on watch from 8 till 12.

Q. Where did you go at 8 o'clock?

A. I went down in the tanks to look around there.

Q. How long were you down there?

A. I was there about an hour and a half.

Q. Were you doing any particular thing down there?

A. Oh, yes, cleaning the refuse of the tanks out.

Q. Throwing it overboard?

A. Yes.

126 Q. How many were down there along with you?

A. Oh, six.

Q. You couldn't see out on the water from there, could you?

A. No.

Q. That is inclosed?
A. Yes.
Q. When did you come up on deck?
A. I came on deck about half past 9.
Q. Did you look at any clock to see what time you came up on deck?
A. No; but I had heard 2 bells go; that meant 9 o'clock, and I judged that it was a half hour from the two bells; that, of course, would be half past 9 when I came up.
Q. So that is your judgment that that was the time?
A. Yes.
Q. How did you happen to come on deck at that time?
A. I was told to go on the lookout.
Q. By whom?
A. By the officer of the watch, I believe. It was passed down for me to go on the lookout; the words were passed from one to the other, do you see.
Q. What was the order that came to you?
A. Underwood, go on the lookout. I went.
Q. Did you go immediately?
A. I went immediately.
Q. Where did you take your position?
A. I took my position right by the stem.
Q. On the topgallant forecastle?
A. Yes.
Q. Whom did you find there when you got there?
A. I didn't find any one there.
Q. When you got there how was the weather?
A. Just coming out thick then.
Q. Could you see off on the water?
A. Yes, I could see—oh, half a minute—did I see anything, did you say?
Q. Did you see the water?
A. I could see the water.
Q. How far off could you see from the ship?
A. About a mile, I should think, to the edge of the horizon.
Q. How long did the weather continue that way?
127 A. The weather continued that way, off and on, for about 4 hours.
Q. How soon after you went on the lookout did you see this tug and tow?
A. Oh, a long time; it was after 10 when I sighted the tug.
Q. How much after 10 o'clock?
A. I should say 5 minutes.
Q. How do you know that?
A. Well, I know that by the bells striking.
Q. What bells had you heard?
A. I had heard 4 bells; that means 10 o'clock.
Q. And this was about 5 minutes after that?
A. Yes.
Q. It was then that you first saw the tug and the schooner?

A. Just so.

Q. And they were then two or three points off your starboard bow; how far off?

A. About a mile.

Q. And were towing right across your course?

A. Yes.

Q. Did you report them just as soon as you saw them?

A. I reported, "A vessel on the starboard bow."

Q. Did you get any reply to that?

A. "All right" was the reply.

Q. Whom did that reply come from?

A. I couldn't say; the third officer I believe.

Q. Did you report her more than once?

A. Yes, I reported twice.

Q. Well, what was the second reply?

A. The second reply was "All right."

Q. You say you reported her twice; your first report was "A vessel on the starboard bow," and the reply was "All right"?

A. Not the first time; I didn't hear any reply, and I waited a couple of seconds and then I shouted out again, and then I heard "All right," and then I thought it was all right.

Q. You made the report twice but never got any response until the second time?

A. Not till the second time.

Q. Were you standing still there looking forward?

A. Yes, sir; quite still.

128 Q. Did you see anything else except this tug and tow going right across your course?

A. No, I didn't see anything else.

Q. It was all clear?

A. The weather was clear you mean?

Q. The water was clear?

A. Oh, yes, the water was clear.

Q. As you watched this tug and tow they were drawing nearer all the time across the line of your course?

A. Yes.

Q. They were going ahead all the time were they?

A. All the time.

Q. You didn't see any stoppage on the part of the tug and schooner from the time that you first saw them up to the time of the collision?

A. What do you mean by stoppage?

Q. You didn't see them stop from the time that you first saw them up to the time of the collision?

A. No, I didn't see them stop.

Q. Did you see any diminution of their speed?

A. No.

Q. Were you watching them all the time?

A. I was watching them all the time.

Q. And you heard no whistles from either vessel?

A. I didn't say that.

Q. Did you hear any whistle from your steamer or from the tug before the collision?

A. I heard none from our steamer; but at the time they struck I heard two or some more whistles—I heard two; I didn't hear any more.

Q. From what?

A. From the tugboat.

Q. Are you sure about that?

A. Yes, I am sure.

Q. And that you will swear to?

A. Yes; it might be she was just on the verge of striking when these whistles came.

Q. Those are the only whistles that you heard before that collision?

A. Yes.

Q. How much time do you think elapsed from the time those whistles were blown until the collision?

A. Oh, about a minute.

Q. As much as that?

A. Not that, I shouldn't think.

129 Q. Well, how many seconds?

A. About thirty seconds.

Q. Do you think you could have counted thirty from the time you heard those two whistles up to the time of the collision?

A. Yes, I think I could.

Q. Just about thirty?

A. Yes.

Q. Did you run back from the topgallant forecastle?

A. No, I stepped aside like that (indicating), put one hand on the bow and looked and seen she was a small boat and knew she couldn't harm us, and I was all right.

Q. Did you feel the jar of the collision?

A. I felt a thump.

Q. Have you signed any statement in regard to this collision?

A. No statement whatever.

Q. Have you been in this office before today?

A. Yes.

Q. Weren't you examined in regard to the collision?

A. Yes; yesterday; but I signed no statement.

Q. Was your statement taken in writing?

A. No; short-hand I believe.

Q. Who was here with you?

A. The gentleman here, Mr. Kirlin, and a young lady.

Q. Any one else?

A. Let's see; I was here twice—I forget now, you see it is a long time, 24 hours; I think there was only three of us here.

Q. Three of your crew?

A. No.

Q. Weren't any of your crew here?

A. They wasn't in our presence.

Q. You told your story and it was taken down?

A. Yes.

130 Mr. Kirlin reads deposition of GEORGE PEYTON, taken on behalf of the claimants, as follows:

Q. What is your age?
A. 21.
Q. How long have you been going to sea?
A. Seven years and a half.
Q. What is your present position?
—. Quartermaster.
Q. Of what ship?
A. Of the S. S. Delaware.
Q. How long have you been with the Delaware?
A. This is the second voyage, nearly two months.
Q. Were you on duty at the time of the collision with the Talisman?
A. Yes, sir; at the wheel.
Q. Where is the wheel?
A. Right amidships on the upper bridge, a small wheel-house.
Q. Who else was on the upper bridge with you?
A. The third officer and the pilot.
Q. Did you see the captain there before the collision?
A. Yes, he came up; before that he was standing in the chart-room door.
Q. How long had you been at the wheel before the collision?
A. About ten minutes.
Q. What had you been doing previous to going to the wheel?
A. Seeing to the flags and one thing or another.
Q. Who directed you to go to the wheel?
A. It was my place to go at four bells.
Q. And you went at four bells?
A. I went when four bells struck.
Q. What time was that?
A. Ten minutes to ten, and three minutes after that I got to the wheel.
Q. The collision occurred when?
A. Three minutes past ten.
Q. Did you take the time?
A. Yes, because the clock was in front of me.
Q. Did anybody speak to you about the time, ask you to note it?
A. No.
Q. What orders were given to you from the time you came to the wheel until the collision, so far as you remember?
A. Only general orders, just to keep her steady, like starboard and port and so on.

131 *A.* Did you hear the report of the vessel on the starboard bow?
A. Yes.
Q. How close were you standing to the third officer?
A. I was inside the wheel-house and he was on the upper bridge.
Q. Was the window open?
A. Yes, the starboard window was open.

Q. And he was on the starboard side of the bridge?
A. Yes, about fifteen feet away from me.
Q. Did you hear him answer the report?
A. I heard him answer the second report.
Q. Did you see the Talisman yourself at that time?
A. No, not when she was reported.
Q. When did you see her?
A. When she was about two points on the starboard bow.
Q. What was there to prevent your seeing her when she was first reported?
A. The side of the wheel-house, the windows being only in front.
Q. Your position at the wheel prevented your seeing more than two points off the starboard bow?
A. Of course, I could crane my neck and see.
Q. When you saw her first did you see the schooner?
A. No, only the Talisman. I didn't know until after she struck that she was towing a vessel.
Q. And the reason for that was that the side of the wheel-house was in the way?
A. Yes, sir.
Q. How was the weather?
A. Pretty thick, raining.
Q. Was there fog?
A. Yes, misty, you know, not a dense fog.
Q. Mist from the rain?
A. Ay, and mist besides the rain.
Q. How far off was the Talisman when you saw her?
A. A quarter of a mile, or a little over.
Q. How long was that before they struck?
A. About two minutes; I should think two or three minutes before they struck, about three minutes.
Q. After the report was given of the vessel on the starboard bow did you receive any orders from the bridge?
A. Not immediately.
Q. What was the first order you received, and from whom?
132 A. The first order I received was "Hard-a-starboard" from the captain.
Q. How far off was the Talisman then?
A. It might be a matter of feet—of course, some distance, two or three ship's-lengths anyway.
Q. What was your compass course?
A. I couldn't tell you that.
Q. Had you been altering the helm a little bit?
A. Yes, I wasn't steering any particular course because we were shifting about all the time.
Q. You don't remember how the vessel was pointing at the time?
A. No.
Q. Did you put the wheel hard-a-starboard?
A. Yes, sir; immediately.
Q. How long did it take you?

A. A very short time, it was steam gear; I had plenty of time to put it there before she struck.

Q. Did you keep it there until the vessels came together?

A. I kept it there until the vessels came together.

Q. Did your vessel swing any?

A. Yes, sir; she just started paying off.

Q. Paying off which way?

A. Paying off to port.

Q. Did you notice what signals were given on the telegraph?

A. Full speed astern.

Q. Did you see that?

A. Yes; at the same time I had the order to hard-a-starboard, the telegraph was put full speed astern.

Q. Do you remember who put it full speed astern?

A. Yes, sir; the captain.

Q. What was the mate doing?

A. Standing alongside of it.

Q. Did the third officer do anything to it before the captain?

A. I couldn't say.

Q. But you saw the captain put it full speed astern?

A. I saw the captain put it full speed astern—they were one on either side and I think it was the captain put it full speed astern.

Q. What time was it with reference to your getting the order hard-a-starboard?

A. The same time.

133 Q. Did the speed of your vessel diminish any after that?

A. Oh, yes; considerably.

Q. Did you notice whether she was actually making headway at the time of the collision?

A. Yes, sir; but not nearly so much as before.

Q. Did you form any judgment as to how fast she was going when the vessels came together?

A. I should say about 3 or 4 knots; 4 knots.

Q. Do you know how the tide was?

A. No, I don't know how the tide was.

Q. Did you remain at the wheel after the collision?

A. Yes; until we came to our berth.

Q. Did you hear any whistles from your vessel?

A. No.

Q. Where was the whistle with reference to where you were?

A. The whistle was right to the fore side of the funnel you know.

Q. How far were you away from it?

A. About 70 or 80 feet, I should imagine.

Q. Could you see from where you stood the guards that lead onto the bridge?

A. Yes; I could see the starboard guard but not the port, because the port door of the wheel-house was closed.

Q. Are you able to say positively whether or not your whistle was blown during the ten minutes preceding the collision?

A. I can swear it was not.

Q. Did you hear any whistles from the tugboat?

A. Yes; three.

Q. What kind of whistles were they; of what duration and at what intervals?

A. That I couldn't say, because I was, of course, very excited and I was attending to the wheel; it wasn't my business to pay attention to whistles; all I had to do was to attend to my steering.

Q. Where was the tug then?

A. The tug approached on the bow then.

Q. Was it close by?

A. Yes.

Q. Did you keep your eye on the Talisman up to the time of the collision, from the time you first saw her?

A. Yes.

134 Q. Did she appear to be coming on or to check down any?

A. She seemed to be going—well, I don't know, I should say she was going ahead all the time anyway.

Q. Are you going back with the Delaware on this voyage?

A. Yes.

Q. When do you expect to sail?

A. This afternoon.

Q. How long was it before the collision that the captain came on the bridge?

A. About a minute.

Q. Did you get the order right away?

A. Immediately.

Q. And were the orders that you have referred to that were given over the telegraph, given immediately after the captain came on the bridge?

A. Yes; at the same time that I received my orders.

Cross-examination read by Mr. PUTNAM:

Q. Your wheel-house is a closed house below the upper bridge?

A. No; on a level with the upper bridge.

Q. But you are below the upper bridge.

A. No; I was on a level with it.

Q. So that you see right out in front of the bridge?

A. Right in front; yes, sir.

Q. But there is a weather awning up around the bridge, is there not?

A. Yes, a dodger, but that isn't near the wheel-house.

Q. It runs all around the outer railing of the bridge?

A. Yes; but the wheel-house is just abaft the upper bridge, but on a level with the upper bridge.

Q. But you have to look out over that weather awning?

A. Yes; over the dodger.

Q. You went to the wheel at four bells?

A. Yes, sir.

Q. That is ten minutes of ten o'clock?

A. Yes; it should have been ten o'clock, but the clock being

altered it was not the same as the regular time, and it was three minutes before I went there, that would be seven minutes to ten.

Q. Who was there?

A. Charles Gleason, my fellow-quartermaster.

135 Q. Is he still on the ship?

A. Yes, sir.

Q. What course did he give you?

A. It was a compass course. I couldn't tell you; when I relieved him he was steering a compass course.

Q. Did he give you that course?

A. Yes, but it was altered soon after.

Q. I want to know what that course was that he gave you?

A. I don't remember.

Q. Did you look at the compass yourself?

A. Of course I did.

Q. What did the compass indicate your course to be?

A. We were steering so many different courses that it would be difficult to tell.

Q. I am not asking you about the different courses; I am asking you about the course you were steering when you relieved that man Gleason?

A. I couldn't tell you; it is quite gone from my memory; it would be hardly probable that I should remember when we are steering so many different courses.

Q. After you took the wheel did Gleason leave and go down below?

A. Gleason went down; yes.

Q. How soon was it after that that you saw the tug and tow?

A. It would be about half a minute past ten when I first got sight of her, or a minute past.

Q. You fix the collision at what time by your clock?

A. Three minutes past.

Q. And you fixed the time by your clock when you first saw the tug and tow?

A. That was when I first saw her, about ten o'clock or slightly after.

Q. Did you look at the clock then?

A. No, not until she struck; but I should imagine it to be that.

Q. Do you know how fast your ship was going at the time that you took the wheel?

A. I don't know exactly how fast.

Q. About how fast?

A. I should say between 9 and 10 knots, something like that.

Q. If you did not look at the compass from the time that you took the wheel up to the time of the collision, will you tell me what you were steering by?

A. I didn't say that I didn't look at the compass; I looked

136 when I first went there until the pilot would say "port a bit" or "starboard a bit," and then he would say "steady."

Q. Will you give me any one course that you steered from the time that you took the wheel up to the time of the collision?

A. No, I couldn't give you one.
Q. You can't give me one course?
A. No, not one; I don't remember a bit.
Q. How long have you been a quartermaster?
A. Two months in this vessel.
Q. Altogether?
A. That is all I have been quartermaster.
Q. That is all in any vessel?
A. That is all anywhere.
Q. How long have you been to sea?
A. Seven years and a half.
Q. On what vessels?
A. Nearly always in sailing vessels; only one steamer before this.
Q. Have you been able seaman?
A. Yes.
Q. How many years?
A. Three years and a half.
Q. Did you stand your watch at the wheel on sailing vessels?
A. Certainly.
Q. How large?
A. The smallest is 700 tons, from 700 to 2,000 tons.
Q. Can you box a compass?
A. Certainly.
Q. Are you perfectly familiar with it?
A. Yes, years ago.
Q. And yet you tell me that you can't give me a single course that you steered that morning from the time you took the wheel until the time of the collision?
A. No, because they have gone from my memory.
Q. That is the reason?
A. Yes.
Q. The pilot was in charge of the navigation?
A. Yes, I should say so.
Q. What is his name?
A. I couldn't tell you.
Q. Could you give me any order that he gave you from the time you took the wheel till the collision?
A. Yes, he gave general orders, such as starboard and port.
Q. Did he say how much?
137 A. He would wait till the head swung off and then say "steady," and I would steady her. When we are entering the harbor we don't pay but very little attention to the compass except for steadying the ship.
Q. He gave you no order in reference to this tug and tow, did he?
A. No.
Q. The only man that gave you any order for that was the captain when he came up?
A. Yes, the captain was the man.
Q. Do you know where he came from?

A. Yes, he was standing at the chart-room door; I couldn't say whether inside or out.
Q. Down below?
A. No, on a level with the main deck.
Q. Below you?
A. Yes, below me.
Q. Did he come up a stairway?
A. Yes, sir.
Q. Did he run or walk?
A. He ran.
Q. How many steps did he have to take from the chart-room to the bridge?
A. He could step from the chart-room door to the bridge ladder in one step.
Q. How many steps up the ladder?
A. About 7 or 8 steps.
Q. And did he come right over in front of your pilot-house?
A. He came straight to the telegraph.
Q. That is in front?
A. Hardly in front, but I could see it; it is slightly on the starboard side, still I could see it through the windows.
Q. When he got there what was the first thing that you saw him do?
A. It was to put the telegraph full speed astern.
Q. And then did he give you the order hard-a-starboard?
A. At the same time.
Q. And you put it immediately hard-a-starboard?
A. Immediately.
Q. Where was the pilot standing at that time?
A. On the port side of the bridge.
Q. Was he looking ahead or looking at the captain?
A. I couldn't say; I couldn't see the pilot.
Q. He was out of your sight?
A. He was out of my sight.
Q. Did the captain make any remark to the pilot or the pilot to the captain?
A. I didn't hear any.
138 Q. Do you remember how your wheel was when that order hard-a-starboard came from the captain?
A. My wheel was as near as possible amidships.
Q. And she steers by steam?
A. Yes.
Q. It is a small wheel?
A. Yes.
Q. And you turned to hard-a-starboard in how many seconds?
A. About 15 seconds to get her over.
Q. Did you hold it there?
A. Yes.
Q. Right up to the time of the collision?
A. Yes.

Q. These three whistles that you heard from the tug, were they before or after the captain appeared?
A. They were before.
Q. Before the captain appeared?
A. Yes.
Q. How much before?
A. I should say about half a minute or a minute before.
Q. Are you sure that those three whistles came from the tug?
A. Oh, yes, because there was no other vessels near us; they must have come from the tug.
Q. That is why you think so, because you didn't see any other vessels anywhere around?
A. Yes.
Q. What was the interval between those whistles?
A. I should think nearly half a minute.
Q. Was there any difference between the intervals?
A. I didn't pay attention to them to know that.
Q. Are you willing to swear that there were three whistles and not two?
A. Yes, there were three whistles.
Q. And there was an interval of, you say, half a minute?
A. Half a minute; somewhere about that.
Q. Between each whistle?
A. Yes.
Q. And yet your steamer made no reply to the whistle?
A. She made no reply.
Q. Didn't you hear three whistles blown from the steamer just before you struck?
A. From our steamer?
Q. Yes.
A. No.
Q. Sure about that?
A. Certainly.
Q. Your whistle is astern of you?
A. Yes, sir; abaft the wheel-house.
Q. You said about how many feet?
A. About 70 or 80 I think; some distance anyway.
139 Q. You are still quartermaster on the Delaware?
A. Yes.
Q. You are going back on her?
A. Yes.
Q. How many voyages have you been quartermaster in her?
A. Only this voyage quartermaster on her; last voyage I was able seaman on her.
Q. Do you remember running into a schooner on that last voyage?
A. Yes; or the schooner ran into us.
Q. Was that your watch?
A. Yes.

Objected to that the previous collision is immaterial.

Q. But you were able seaman then?

A. Yes; I was in the boat that ran a line out to her, that went to her rescue.

Q. Did you tow her into port?

A. Yes, sir.

Q. What port did you tow her into?

A. I couldn't tell you; it was night-time when we dropped her; I think it was Newport, but I am not sure. I think I made a mistake; our whistle must be further abaft the bridge than what I have stated.

Q. How far should you say?

A. Of course it is hard to say.

Q. You said 70 feet.

A. Yes, it must be more than that, because there is a good length of main deck and the length of the bridge; it would be at the least twice that.

Q. Is the steam whistle of the Delaware a sharp or husky whistle?

A. I don't know.

By Mr. KIRLIN:

Q. Is it a deep-throated whistle?

A. I should say it was.

By Mr. WING:

Q. Was it blown at any time that morning?

A. Yes, it was blown before I came to the wheel, because I heard the captain (I think it was the captain) tell the third officer to see that the lanyards were in working order; that was before I went to the wheel.

Q. You heard it blown?

A. Yes.

140 Q. How many blasts?

A. Only one, I think; they were only just trying it; I didn't pay any attention.

Q. That was before you came to the wheel?

A. Yes, sir, before it came on thick.

Q. That was the only time you heard it that morning?

A. Yes, sir.

Redirect by Mr. KIRLIN:

Q. About how far is the bridge from the stem-head, in your judgment?

A. About 150 feet.

Mr. Kirlin reads deposition of ALEXANDER COGHILL, taken on behalf of the claimant, as follows:

Q. What is your age?

A. 36 years.

Q. Where do you reside?

A. Port Glasgow.
Q. What is your present position?
A. Carpenter on the steamship Delaware.
Q. How long have you been with the Delaware?
A. A little over three months.
Q. You joined her when she was new?
A. Yes, sir.
Q. Where were you when the Delaware and the Talisman were in collision?
A. Standing abaft the bridge.
Q. Did you see the Talisman at any time before the collision?
A. No, sir.
Q. What were you doing on deck?
A. Standing at No. 6 tank valve abaft the bridge.
Q. Was the steamer's whistle blown within the last five minutes or ten minutes before the collision?
A. I didn't notice any whistles at all, sir.
Q. Were you anywhere near the whistle?
A. It is a good bit aft of where I was standing.
Q. You were on the main deck and the whistle is above the main deck?
A. No, the whistle is abaft of that.
Q. There is nothing between you and the whistle, is there?
A. No, sir.
141 Q. There is no reason why you shouldn't have heard it?
A. No, sir.
Q. How long were you there?
A. Ten minutes.
Q. Could you say positively whether during that time the whistle was blown or not?
A. I don't remember hearing any.
Q. Were you back by the ladder when the men who were picked up in the boat came alongside the Delaware?
A. Yes.
Q. Who was by the ladder?
A. The second mate.
Q. Mr. Dowbiggin?
A. Yes.
Q. Where was the ladder?
A. On the port side of the gangway, abaft the bridge.
Q. Who was there alongside of him and you?
A. The engineer was standing there, the tug's engineer, and one of the hands.
Q. Did you hear the engineer say anything to the men in the boat as the boat came alongside?
A. Yes, sir; he shouted out, "How many have you got?" and they sung out they had two.
Q. That was from the boat?
A. Yes; then he wanted to know who was missing.
Q. Who wanted to know that?
A. The engineer.

Q. What was said?

A. They said "Gus;" somebody by the name of Gus. Then he said what he had done when he see there was going to be a collision; he jumped and opened the valve up, and that if he had cut the rope when they told him he would have run clear altogether.

Q. If who cut the rope?

A. They didn't say who.

Q. Was an answer made to that from the boat?

A. No.

Q. Did you hear any further conversation between the engineer and the men in the boat?

A. No, I went away about my business.

Q. How did you know this man was the engineer?

A. By the way he spoke—no other man would open out the valve—and by his dress.

Q. How was he dressed?

A. In a blue dungaree suit.

142 Q. What kind of a looking man was he?

A. A kind of a little rough-looking man, I think a little reddish, if anything.

Q. What whiskers did he have?

A. No whiskers.

Q. A moustache?

A. Yes, I think so; I would know the man if I see him again.

Cross-examination read by Mr. PUTNAM:

Q. Did you have anything to do there by the port gangway?

A. No, nothing particular, only to see the boat coming in.

Q. It was just curiosity that drew you there?

A. Yes.

Q. Did you stay there until the men had all come up on deck?

A. Yes, sir.

Q. And then you went about your business?

A. Yes, I was doing nothing particular anyway.

Q. Have you given us all the conversation that passed between this man and the boat?

A. The only other conversation I can remember was he asked them to go into the cabin and pick up some of his clothes which was floating past there, one part of it.

Q. Which side?

A. On the port side.

Q. That is, a part of the tug's cabin was floating past your port side and this man whom you thought was the engineer, told them to go into the cabin and pick up some of his clothes?

A. Yes.

Q. What reply did they make?

A. They said they couldn't get in there.

Q. They didn't go, did they?

A. No.

Q. But they came up on board?

A. Yes, they came up.
Q. Now, have you given us all the conversation?
A. That is all that I heard, sir.
Q. This man, the engineer, seemed to do all the talking?
A. He done all the talking, sir.
Q. He made a sort of a speech, didn't he, to the men in the boat?
A. It wasn't a speech, just giving his opinion.
Q. To the men in the boat?
A. Yes, sir.
Q. He didn't address himself to you?
A. No, sir; not to me at all.

143 MARCH 2, 1894.

Met pursuant to adjournment.

Mr. Kirlin reads deposition of FREDERICK HARPENNAU, taken on behalf of the claimant, as follows:

Q. You are a New York pilot?
A. Yes.
Q. How long have you been a pilot?
A. Since 1869.
Q. Have you been piloting vessels in and out of this harbor since that time till the present?
A. Yes, sir.
Q. Were you on board the Delaware on the 16th of September, 1893?
A. I was, sir.
Q. When did you join the ship; how long before that?
A. I joined the ship the second day before the collision at night.
Q. Were you on the bridge at the time of the collision with the Talisman?
A. Yes, sir.
Q. At what hour did you go on the bridge that morning?
A. I went on the bridge at four o'clock in the morning.
Q. Were you on watch up till breakfast time?
A. Yes, sir.
Q. What time did you go to breakfast?
A. About eight o'clock.
Q. What time did you return to the bridge?
A. About half past eight.
Q. Were you on the bridge continuously from then until the collision?
A. Yes, sir.
Q. Did you pass the light-ship before you went to breakfast or after you came back?
A. We passed the light-ship after breakfast.
Q. What was the condition of the weather that morning?
A. It was cloudy, overcast up till we got within three or four miles of the bar when it came out in a heavy rain squal-.
Q. How long did the squall last?
A. About ten minutes.

Q. Did it stop before you got to Gedney's channel?

144 A. It stopped when I got to within about a mile or so.

Q. Before the rainstorm came on did you see the pilot station-boat?

A. I did.

Q. Where was it?

A. I see it to anchor up to the northward of Gedney's channel.

Q. Did you notice whether she had any sail up?

A. She had her mainsail hoisted up, her peak dipped.

Q. Was there any other vessel near her at that time?

A. I see an oil tank coming out.

Q. Was there any tugboat near her?

A. A tugboat going close to the oil tank; as near as I could judge; it went there to take a pilot out, and I see the tug leaving the tank and going up towards the station-boat; this was before the squall came on.

Q. After the squall came on did you see the pilot-boat or the tugboat again before the squall stopped?

A. No.

Q. Did the squall interfere with your seeing?

A. Yes, I couldn't see not over a couple of ship's-lengths during the thickest of it.

Q. Was it during or before that squall that you passed the whistling buoy?

A. It was right after the squall; when it cleared up I could see the whistling buoy.

Q. Which way was it?

A. To the southward of us.

Q. About how far and how bearing?

A. Probably about south-southeast, about a mile or so.

Q. Up to the time the squall passed over had you made either of the outer buoys of Gedney's channel?

A. I had not; I seen the buoys before the squall came over and I found that I was heading right for them, but seeing this tank coming out I ported about half a point so as to make sure not to come anywheres near him.

Q. Then when the squall passed over so that you were able to make out the buoys again, how were they bearing?

A. I made the buoys about half a point on my port bow,

145 and I was steering then west half south by ship's compass; that would make it bear west by south.

Q. Which buoy is it that bore that way?

A. The red buoy.

Q. How far distant were you from the red buoy at that time, do you judge?

A. I judge about a mile, perhaps, or half a mile.

Q. Did you alter your course any at that time?

A. I starboarded about a point to clear her, to bring the buoy on the starboard bow.

Q. How much did you starboard before you steadied again?

A. About a point.

Q. And then did you steady on that?
A. Steadied on that.
Q. How did that leave the red buoy bearing?
A. It left the red buoy bearing about west half north.
Q. How many points over your bow?
A. About half a point on the starboard bow.
Q. Did you notice the pilot-boat or the tugboat at that time?
A. I did; I see him after this squall passed over; I see the pilot-boat; it looked to me in the same position as I seen it when I came in by the light-ship before the squall shut me in, and I see the tugboat close to her, expecting that she was lying there waiting for to take some more pilots out coming down in the ships, indicating that the boat was still at an anchor, with the mainsail hoisted up and the peak dipped.
Q. Had the rain entirely stopped at that time?
A. No, it had not; it was still falling a little.
Q. What was the condition of the tide?
A. The last of the flood tide.
Q. Was there any wind to speak of?
A. Very little.
Q. From which direction did it come?
A. It was then, what little there was, from the west-northwest.
Q. What was the next you noticed about the tugboat and the pilot-boat?
A. When I got within about three or four ship's lengths of the outer red buoy it looked to me as though there was going to be another little more fog and rain coming on, and I took the
146 glasses up to look for the reef of the buoys, and while I was in the act of looking through these glasses I heard a whistle on the starboard bow, or at least I heard a whistle, and looking around I saw this tugboat with the pilot-boat, seeing then that the tugboat was towing the pilot-boat.
Q. Were they above the channel or in the channel at that time?
A. They were above the channel, I should judge, close to the second red buoy.
Q. Which way did the tugboat appear to be pointing?
A. She was pointing about right for my bow.
Q. How pointing on the compass?
A. It was about southeast, I judge, around there.
Q. At that moment how was the outer red buoy bearing?
A. The outer red buoy was bearing then about west half north.
Q. How many points over the starboard bow?
A. About a point or half a point.
Q. What signal did you hear from the tug?
A. One whistle.
Q. Did you answer it?
A. I did not.
Q. Why not?
A. When I did hear the whistle and see the tugboat I intended to give one whistle, but I had this buoy right close under my starboard bow, and being flood tide, I couldn't port, the tide would

sweep me on top of it, and I couldn't starboard either; altering the helm would have sent me more closer to the buoy, and I was that close to it that I had to let my ship go full speed so as to get past the buoy without running in any danger of picking it up in the propeller.

Q. Could the other vessel-, if they had looked, have seen your position with regard to this buoy at that time?

A. They could.

Q. What did you do then?

A. The position of the boat to me looked that there was no trouble to me to go across the course he was going with the course I was steering, and for that reason I didn't answer the whistle. And about the time I got past the buoy in position to use my helm we had closed up so much that I couldn't use the port helm—by doing so I would have had to collide with the station boat, and to
147 use my starboard helm would—I found out I couldn't, it would involve more risk of collision by bringing my broadside to his.

Q. What order did you then give, if any, on your ship?

A. I see that a collision was imminent; I gave the order to stop and go back at full speed to the captain.

Q. Was the captain on the bridge at that time?

A. He had come up just a short time before we came together.

Q. Was he on the bridge when the order to go astern was given?

A. Yes, sir.

Q. Who rang the telegraph?

A. The captain was standing there.

Q. Did you hear the captain shout out anything to the other vessels?

A. Yes, sir; he sung out "Hard-a-port.

Q. Do you remember any order being given to your helm?

A. I don't remember; as near as I can remember the captain gave the order "Hard-a-starboard."

Q. How close were you to the vessels then?

A. We were perhaps a ship's length from the tugboat.

Q. Between the time when you first noticed the tugboat after the squall abated when you say she was bearing as you thought about southeast, and the time the captain came on the bridge, had the course of the tug changed?

A. It appeared to me that it was porting up, porting a little more.

Q. How was she bearing when the captain came on the bridge?

A. She was bearing then about five points on our starboard bow.

Q. At the time you stopped your engines?

A. At the time we stopped our engine she was almost eight points.

Q. Do you mean off your beam?

A. I am thinking of the way she was steering.

Q. When you heard the tugboat's whistle and looked at her how did she bear from your vessel?

A. She bore then between three and four points,

Q. On your bow?

A. On the starboard bow.

Q. Which bow did she bear and how many points on it at
148 the time the captain came on the bridge?

A. I think she bore about the same.

Q. Between those two times how much had the course of the tug changed, and which way?

A. It was changed to the port, porting up a little.

Q. How did she appear to be heading at the time of the collision?

A. At the time of the collision she was heading very near south I guess.

Q. You mean on a course south do you?

A. Yes, sir.

Q. Before your helm was hard-a-starboarded what course were you on?

A. I was, as near as I could judge, heading about west by south.

Q. From the time you had starboarded one point, when you say you were a mile or so outside of the outer buoys, until the captain came on the bridge, had you altered your course at all?

A. No.

Q. Been on the same course continuously had you?

A. Yes.

Q. How much did the vessel's head swing off to port after the helm was hard-a-starboarded and the Delaware began to back?

A. I didn't take any notice.

Q. What do you think now; how much do you think she swung off?

A. I wouldn't like to give any opinion on that; I was watching the tugboat; I know she was swinging.

Q. Was your whistle on the Delaware sounded at all at any time from the time you first saw the tugboat before the squall came up until the collision?

A. Yes, sir; we tried to whistle coming in.

Q. Was that before or after you saw the Talisman?

A. That was before we saw the Talisman.

Q. How long before?

A. Perhaps fifteen or twenty minutes.

Q. Did your whistle sound at all after that up to the time of the collision?

A. No, sir.

Q. In your judgment did the Talisman ever get far enough across you- bow for her captain in the pilot-house to see the port side of your vessel?

A. No, sir; it did when we collided; when we got our ship stopped and going back on her, our head swung to starboard.

149 Q. I mean any substantial interval before the collision?

A. No.

Q. How near stopped was your ship at the time of the collision?

A. She was going about three or four knots.

Q. How long do you think before the collision it was possible

for Captain Winnett in the pilot-house of the Delaware to see your port side?

A. Not till the very last minute; just before we struck.

Q. How far off, how much space in the water do you suppose there was between the ships when he was able to see the port side of your vessel?

A. Not more than about twenty feet, fifteen or twenty feet.

Q. Did the Talisman appear to stop or slow down at any time before the collision?

A. No, sir.

Q. When your steamer was three lengths away from the Talisman, if the Talisman had stopped or slowed down would there have been any collision in your judgment, or not?

A. No, I would have gone right across him.

Q. You mean across ahead of him?

A. Yes, sir.

Q. After he had stopped, when your ship was three lengths off, how far would you have cleared him in your judgment?

A. I would have cleared him perhaps fifteen or twenty feet; fifteen feet.

Q. What did you expect the Talisman to do under the circumstances, as you saw them?

A. I expected he would stop or slow up.

Q. What made you think that?

A. The way I was heading and the way he was on my starboard bow I had no chance to port without running a chance of colliding with the pilot-boat, going faster, the tugboat was drawing in more broad on my beam; for that reason I expected he would stop. There was no possibility of my clearing the boat after I got past clear from the buoy.

Q. At what angle do you say the vessels came together?

A. About right angles; more than right angles.

Q. In what part of the channel did the collison occur?

A. Very near the centre.

150 Q. Between the line of what buoys?

A. Between the red and black buoys,

Q. Your ship was drawing light at the time, was it not?

A. Yes, sir.

Q. Why didn't you go outside the channel?

A. It getting thick and dirty, I wanted to go by the way of the buoys, from one buoy to another.

Q. Was there anything, so far as you could see, that would have in any way interfered with the Talisman's slackening or stopping at any time before the collision?

A. No; she could have stopped or slowed up without any difficulty; she was head to the tide.

Q. When do you expect to go to sea again?

A. In three or four days.

Cross-examination read by Mr. PUTNAM:

Q. When Captain Thomas rushed up on the bridge what was the first thing he said to you?

A. "What are you trying to do, pilot?"

Q. Where were you standing when he said that?

A. I was standing just about amidships there; a little on the starboard side.

Q. The third officer was at the telegraph, was he, at that time?

A. Yes, sir.

Q. When the captain said to you, "What are you trying to do, pilot?" weren't you looking through your glasses at the time?

A. No, not then.

Q. You had been looking through your glasses?

A. I had been looking through my glasses.

Q. You had noticed it was a little more squally further up the channel, had you not?

A. After the first heavy squall passed over and cleared up, when I got close to the outer red buoy, it looked to me that it was going to be thick, another little rain squall coming over, and I was afraid it was going to shut down foggy, and for that reason I took the glasses up to look for the other buoys.

Q. Did you see beyond the buoys any steamers coming out?

A. I did, yes.

Q. How many steamers did you see coming out?

A. One.

151 Q. What kind of a steamer was it?

A. A French steamer.

Q. Was it coming down the swash channel or the main channel?

A. The main channel.

Q. Was it a passenger mail boat or a cargo ship?

A. A passenger boat.

Q. How near to you was this French boat when you were looking at it through your glasses?

A. That was after this squall had let up, I see the French boat down in the bay, coming down.

Q. At this time, when you had the glasses and were looking ahead, how near was the French boat then?

A. Down just about turning the spit.

Q. The southwest spit?

A. Yes, sir.

Q. Was there any nearer steamer than that to you?

A. No, sir.

Q. That is the only one that you saw?

A. Yes, sir.

Q. Do you remember noticing at that time, when you were looking through the glasses, whether she had rounded the spit or whether she was still showing her port side to you?

A. I didn't take any notice of that; I didn't look at the French steamer while I was looking for the buoys; I didn't see it then; I seen the ship before.

Q. Wasn't she in the line of the buoys from you?
A. No.
Q. Which way was she?
A. She was in back to the Hook.
Q. Was it to the port of the line you were looking, or to the starboard of the line you were looking?
A. She would be in my view, but I couldn't see her at that time; when I was looking through the glasses, it was hazy.
Q. Are you sure when you were looking through the glasses that you couldn't see the steamer?
A. I didn't see her.
Q. Did you look for her?
A. I didn't look for the steamer; I was looking for the buoys.

152 Q. During the time that you had the glasses up to your eyes and were looking ahead, did you see anything of the steamer at all?

A. I did not.
Q. When was the time that she appeared to be rounding the spit?
A. After the squall had passed over.
Q. Was that before you passed the whistling buoy or after?
A. That was after I passed the whistling buoy.
Q. And before you got in to see the buoys of Gedney's channel?
A. Yes, sir.
Q. At that time this French steamer appeared to be rounding the southwest spit?
A. Yes, sir.
Q. You didn't see her again until after the collision, did you?
A. No.
Q. Did you hear any whistles from her at all?
A. No.
Q. At the time that you took up the glasses to look up the channel had you made either the red or black can buoys at the entrance to the channel?
A. I had, yes, sir.
Q. Do you know whether you made the second buoys, either red or black, in the channel at the time you took the glasses?
A. No, I hadn't seen the second red buoys yet.
Q. Of course you hadn't seen the third ones?
A. No.
Q. While you were using the glasses had you made out the second buoys?
A. No, sir.
Q. You hadn't picked them up?
A. No, sir; it was in the act, while I was trying to pick the buoys, look for the black buoys that I heard this whistle.
Q. You heard more than one whistle from the tug?
A. No, sir.
Q. How long was it after hearing this whistle that the captain rushed up on deck?
A. It might — a minute or so, half a minute.

Q. Very quick was it not?

A. Yes, very shortly after.

Q. Which stairs or steps did the captain use in coming up on the bridge, if you saw?

A. He came up on the starboard side of the bridge.

153 Q. When he said "Pilot what are you trying to do," did he point out with his hand the tugboat and pilot-boat?

A. I don't remember that he did.

Q. Do you remember which was the first thing that was done after he came up; the order to the wheel hard-a-starboard or the working of the telegraph stop?

A. It was stop and go back full speed and helm hard-a-starboard.

Q. Do you remember which was first?

A. I think stop and full speed astern.

Q. That was your order, was it?

A. My order was stop and go back full speed, and the captain's order was hard-a-starboard.

Q. Did you have any other talk with the captain at the time he came up on the bridge?

A. The remark I made was when the captain came up and asked me "Pilot what are you trying to do" I told him "What can I do? We can't port and go under that boat's stern" I says "We can't starboard neither; we will be showing our broadside to him, the only thing is for him to stop and slow up and let us go past." I said to the captain "Surely the man will stop and slow up and let us go by."

Q. Did you say to the captain that you couldn't starboard?

A. No, we could not then to avoid a collision.

Q. How was it that the captain did, notwithstanding that, order the wheel hard-a-starboard?

A. That I don't know.

Q. Were there any signals given of any kind to indicate that you had starboarded your wheel?

A. No, sir.

Q. How close do you think this tugboat was from the bow of your ship at the time the captain rushed up on the bridge?

A. I judge two or three ship's-lengths.

Q. How far off do you think the tugboat was at the time the wheel was put hard-a-starboard?

A. By the time we was stopped and going back full speed and the helm hard-a-starboard, about a ship's-length.

154 Q. I didn't ask you how long it was after you had stopped, but how long it was after the wheel was put over hard-a-starboard, how long a distance from the bow of the steamer to the tug at the time your steering wheel was put over hard-a-starboard?

A. About a ship's-length.

Q. Did you see what part of the tug the steamer struck?

A. From our bridge I judge she struck abaft the funnel.

Q. Abaft the tug's funnel?

A. Yes, sir.

Q. How do — think the Delaware headed by compass at the time of the collision?

A. She was heading about west, perhaps west by north.

Q. Haven't you stated that when you first made the red buoy you made it bearing on the port bow?

A. Yes, sir.

Q. And when you first made it what was you- course before you had changed?

A. West half south.

Q. How much of a change of course did you make to bring the red buoy on the other bow?

A. I made about a point change.

Q. Then your course, after that change and until the captain interfered, was west-southwest, wasn't it?

A. No, west by south half south, that is, allowing the ship's compass about half a point westerly variation.

Q. When the captain interfered and put the helm hard-a-starboard did the steamer answer it?

A. He blowed two whistles right under our bows, two short whistles.

Q. When the captain ordered your helm hard-a-starboard did your steamer, the Delaware, swing off in answer to her helm?

A. I don't think she did, I couldn't say; I wasn't watching the compass.

Q. But when you last saw the compass what was the heading before the collision?

A. She had been heading west by south half south; I didn't alter the course.

Q. And if it did alter it any way it would swing it more to the south, wouldn't it?

A. Yes.

Q. So that she must have been heading west by south half
155 south, or west-southwest?

A. That would be west by south correct; no, west by south half south would make west by south correct course.

Q. Do you mean west by south true?

A. Magnetic.

Q. You think there was half a point's deviation in the ship's compass?

A. Yes, sir, I am sure.

Q. What is the magnetic course straight through Gedney's channel, between those buoys?

A. West-northwest, a quarter west.

Q. Then at the time before the captain interfered, you were steering three points and a quarter off the true course?

A. Yes.

Q. You have seen the buoy that was put over the wreck of the tugboat after the collision, haven't you?

A. Yes, sir.

Q. And that is pretty near the southern line, isn't it?

A. Yes, sir.

Q. How far do you think the steamer pushed the tugboat before it sank?

A. Might have pushed it a hundred feet.

Q. Then the place of collision was within a hundred feet of the place where that buoy is?

A. No, but this was a flood tide and everything else set us up at the time of the collision.

Q. Then the effect of the tide would be to float the wreck further to the north, wouldn't it, than if it was in still water?

A. Not the way we was heading, we were pushing the boat to the westward.

Q. What I want to get at is how far you think the steamer was pushing the boat before the boat went down to the bottom and sank?

A. I couldn't give you any estimate on that.

Q. Do you think a hundred feet was too little or too much?

A. It might be a little more and might be a little less; I couldn't say.

Q. Suppose that the captain hadn't come up on the bridge at all at the time the tug blew any whistles, and you had remained there in charge, would you have blown any whistles to the tug?

A. No, I seen the whistles couldn't do no good.

Q. Would you have done anything?

A. I would have stopped and gone back the same as we
156 did; but my only chance was to keep our ship going until the last minute in case he should stop, and slip by him.

Q. You know that it is customary to blow short quick toots of the whistle as an alarm signal if you can't navigate safely; did you think of doing that at all at the time?

A. No, I did not.

Q. You have done that on steam vessels often, blown short quick blasts to indicate danger?

A. I don't know.

Q. Haven't you?

A. No, I blowed three blasts to go back full speed; blow several short blasts to draw a ship's attention.

Q. To draw a ship's attention that is in your way, or that is coming towards you, haven't you?

A. Yes.

Q. You have often done that to a small boat that is crossing your course, have you not?

A. No, not that I know of.

Q. What kind of ships were they to which you draw their attention by blowing short blasts?

A. I would blow my blasts to steamships and sailing vessels, both, for that matter.

Q. During this shower or rain squall were you on the port side of the bridge most of the time?

A. Yes, sir.

Q. Was there any other officer of the ship on the port side with you during the squall?

A. No, sir.

Q. Had you before you heard this whistle made out the two black buoys on the south side of Gedney's channel?

A. I had not.

Q. Had you made out the first black buoy?

A. I had made out the first black buoy; yes, sir.

Q. Did you make out any buoys in the channel while you were using your glasses, and before the captain came up?

A. No, I did not.

Q. Was it too thick to do it?

A. It was a little kind of fog, haze bank coming over.

Q. Did you see, after the collision, how near the place where the tug and steamer came together was to that second black buoy in Gedney's channel?

A. I don't understand.

157 Q. When you struck the tugboat did you see the second black buoy then?

—. I could have seen it if I had looked; but I didn't look.

Q. Did you see it after you did strike?

A. Yes, I seen it afterwards.

Q. How far was the place where you struck to that second black buoy?

A. Just about half way between the two buoys.

Q. The first and second?

A. Yes, sir.

Q. And how near to the line of the two buoys was it?

A. About three hundred feet, or five hundred feet say.

Q. How was it, if you got within so short a distance, that you hadn't seen that black buoy before the collision?

A. I would have seen it if I had looked perhaps; but this whistling——

Q. You say you had been looking through your glasses to make out those buoys?

A. Yes.

Q. But you hadn't been able to see them?

A. No, I hadn't seen them when I heard the whistle from this tugboat but it cleared right up then afterwards.

Q. At the time the captain came on the bridge and spoke to you, had you heard more than one whistle of the tug?

A. That is all I heard, one whistle.

Q. Had you any report from anybody on the ship of any other whistle than that one?

A. No, sir.

Q. When you first noticed the tug near to the pilot-boat, was the tugboat then moving or was she lying still?

A. She looked to me lying still; I took her to be at anchor.

Q. You didn't see any other pilot-boat at the regular place for the anchorage station?

A. No.

Q. And you knew that this pilot-boat was the station-boat didn't you?

A. Yes, sir.

Q. Didn't you expect, as a pilot, that she would go down and go on her proper station as soon as she could?

A. Yes, sir.

Q. That was the right thing for her to do, especially when steamers were going out to sea, wasn't it?

A. Yes, sir.

Q. How near to the black buoy No. 1 is the proper sta-
158 tion for the pilot-boat?

A. The proper station is anywheres outside of the black buoy.

Q. They generally lie a little to the southward and eastward of the black buoy, didn't they?

A. Yes, sir.

Q. So that you knew that if this boat went to her station she would have to go across Gedney's channel to go to her station, didn't you?

A. Yes, sir.

Q. When you saw it in tow, could you see what number the boat had?

A. I knew it was No. 7.

Q. And that number was on the sail, wasn't it?

A. Yes.

Q. Suppose, just before the captain rushed on the bridge, when you were still near the first red buoy, and the French steamer which you last saw rounding the southwest spit, had come out through the drizzling rain right down Gedney's channel to sea, how would you have passed her?

A. I would have passed her, port my helm and go past on her port side.

Q. The width of Gedney's channel is such that steamers can meet and pass without any trouble, can't they?

A. Yes, but I would rather say that would be according to how the ships were steering.

Q. But suppose there is nothing the matter with the steering of the ships; they can pass each other in eleven hundred feet of water, can't they?

A. Yes.

Q. The tide was not strong that day, was it?

A Average tide.

Q. It would be high water some time between eleven and twelve o'clock, wouldn't it?

A. Yes, sir.

Q. Did you sing out anything to the pilot-boat yourself, or did the captain do that?

A. No, the captain sung out.

Q. Did you give any orders to any one except to stop the engine?

A. That is all I gave.

Q. At the time the tug blew that one whistle, how far off do you think she was from your bow?

A. I think she was about two thousand feet, two or three thousand feet, twenty-five hundred feet.

Q. And she was then heading on a course that would cross yours, wasn't she?

A. Yes, sir.

159 Q. And was showing her port side and the port side of the pilot-boat to you?

A. Yes, sir.

Q. You know that when the courses of vessels are crossing, and you have the other vessel on the starboard hand, it is your duty to keep out of the way, don't you?

A. Certainly, but circumstances alter cases.

Q. And the circumstances in this case was that you thought that she would get out of the way; is that it?

A. No, I had the buoy right under my bow; I couldn't stop my ship without running in danger of damaging my propeller and disabling my ship.

Q. Isn't it more dangerous to starboard the wheel in such a position throwing the stern right towards the buoy, than it would have been to port the wheel and throw the stern away from the buoy?

A. In the position our ship was, I was coming, I couldn't neither port nor starboard to clear her.

Q. You did actually starboard when the captain came up, didn't you?

A. I had passed the buoy then.

Q. As soon as you passed the buoy you could port or starboard without any trouble, couldn't you?

A. I was then too close quarters to the tugboat to make use of either helm.

Q. But hav-n't you said that when you were close to the buoy, and this whistle was blown, they were two thousand feet off?

A. Yes.

Q. When you got past the buoy they must have been one thousand feet off still, weren't they?

A. I think it would be less than that; it is pretty hard to judge that distance exactly.

Q. Did the third officer make any remark to you at all before the captain came up?

A. No, sir.

Q. You knew of course that you were in charge of the navigation of the ship in taking her across the bar?

A. Yes, sir, certainly, the mate, when the buoy was reported and the pilot-boat after this squall had let up, he took the word from the man forward who sung out and gave me the word too.

Q. Was that after the red buoy had been sighted?

A. Yes.

160 Q. And after you had given the order to starboard one point to the red buoy on the starboard bow?

A. Yes, sir.

Q. How close do you think you passed that red buoy?

A. I passed it that close that I was afraid that I would not clear it the way I was going.

Q. How close do you think you did clear it?

A. I might have cleared it about four or five feet.
Q. You think as close as that?
A. It looked that way; it may have been more.
Q. And you kept on on a course angling with the channel three and one-quarter points until the collision, or until you starboarded before the collision?
A. Three and three-quarters points.
Q. Had you noticed the course of the tug and the pilot-boat particularly before he blew his whistle?
A. No.
Q. Do you think that it was within half a minute after the whistle was blown that the captain rushed on the bridge?
A. About that time.
Q. And it was directly after that that the engines were stopped and the wheel put hard-a-starboard?
A. Yes, sir.

By Mr. KIRLIN:

Q. You say you said to the captain, "Surely he will stop and let us go ahead," what made you think that?
A. We expect little courtesies that way.
Q. What do you mean by that?
A. Quite often they do; quite often they give us the right of way; even if we have not the proper right to it they will.
Q. Who does that?
A. There is quite a number of tugboat men that I know; it was the only way I could see to avoid a collision, for him to stop.

The official tide tables for September 16, 1893, show that for Sandy Hook high water was predicted at 11.48 in the forenoon; with the note in the margin that for the 16th and other days to the 20th "small tides currents somewhat weaker."

161 Mr. Kirlin reads deposition of ARCHIBALD BLAIR, taken on March 8, 1894, under a commission issued to the consul general, London, England, on behalf of the claimant, as follows:

First interrogatory. Please give the name of the owner of the steamship Delaware, and state your relation to the owner. How long have you stood in this relation to the owner?
A. The steamship Delaware belongs to the Anglo-American Oil Co. Mr. John D. Jamieson is the managing owner and one of the directors of the company. I have had to do with all the ships under him. I have had to do with all the captains, officers and engineers, and the hull and machinery of the vessel, as marine superintendent of the said company. I have occupied that position about four years. The first of this present month of March, 1894. I have been for about 39 years in the engineering trade, 14 of which have been at sea, and 12 of that time as chief engineer. I have also a first-class certificate of competency from the board of trade. After leaving the sea I was appointed managing engineer to Messrs. Lester and Perkins, of London, which firm does a large repairing

business for the principal steam and sailing ship-owners having vessels sailing from the port of London, and I occupied that position to that firm for 13 years.

Second interrogatory. How long has Capt. Thomas been in the employ of the owner of the Delaware? What inquiries were made by the owner at the time of his employment to ascertain his fitness or qualifications for the command of the Delaware, and what was the result of those inquiries?

A. Since June, 1893. She came out new in June, 1893. Capt. Thomas had been in the service of the Manhattan Steamship Co., consisting of the same owners, shareholders and directors as those of the Anglo-American Oil Co., to which the Delaware belongs, since September, 1889. Before my time with the company,
162 Mr. Jamieson, who is now deceased, was in the habit of engaging officers himself, and I know personally that he was very particular in making inquiries as to the character and ability of the men. I cannot speak as to any inquiries which were made before I joined the company. I can only speak of Capt. Thomas since I have known him.

Third interrogatory. From your knowledge of the services rendered by Capt. Thomas since he has been in the employ of the owner are you able to form any judgment as to his fitness and qualifications for the command of the Delaware? If so, state it. In giving this answer, do you speak for and by authority of the company?

A. I have known him as second and chief officer of the company at first. He proved himself as careful, intelligent and attentive to his duties, and was promoted to the command of the Manhattan, owing to an excellent recommendation given him by his captain, whom we had appointed to a new steamer. He holds a certificate of competency from the British board of trade as master mariner, which is dated the 23d day of the second month of 1885. In giving this evidence as to his fitness, I may say that a communication was sent to the managing director, and he asked me to come and give any information that was required, and this certificate was sent to me after Mr. Jamieson's death, but none of the directors know anything about it—only myself. I do give this answer by virtue of my position and the knowledge I have obtained in my capacity as the marine superintendent of the Delaware Steamship Co. Mr. Jamieson died on the 30th January last.

Fourth interrogatory. How long have the first officer, Edward Dowbiggin, the second officer, and Henry Cracroft, the third officer, been in the employ of the owner of the Delaware? What inquiries were made by the owner at the time of their employment to ascertain their fitness or qualifications as officers of the Delaware, and what was the result of those inquiries?

163 A. Mr. Edward Dowbiggin joined the Delaware as third officer in June, 1893, and was promoted to second officer in August, 1893; and Mr. Henry Cracroft joined as third officer in August, 1893. They both hold certificates. Dowbiggin holds a master's certificate, dated the 3d day of the fourth month of 1880.

Cracroft holds a master's certificate since the 4th day of the tenth month, 1886. Dowbiggin was highly recommend- by Captain Robinson, whom we had acting under me looking after the building of the steamers. He had known him for years, he was highly recommended by him. Cracroft applied to the company for a situation, and he showed us his testimonial, that he had been in the service of the New Zealand Shipping Company for fifteen years, and the last three and a half years of that he was master in their employ, and he left their employ through the ship being laid up; so we did not make any inquiries of the owners as to him.

Fifth interrogatory. From your knowledge of the services rendered by the first officer, Edward Dowbiggin, the second officer, and Henry Cracroft, the third officer, since they have been in the employ of the owner, are you able to form any judgment as to their fitness and qualifications as officers of the Delaware? If so, state it. In giving this answer, do you speak for and by authority of the company?

A. I have found them since they have been in our company very attentive to their duties and duly qualified to perform the duties they are called upon to do; and in giving this testimony I give it by virtue of my office of marine superintendent of the company, and from the knowledge which I have acquired through that position.

Sixth interrogatory. Please state what diligence was used by the owner of the Delaware to make the ship in all respects seaworthy and properly manned, equipped and supplied for the voyage on which the collision which is the subject of this suit occurred?

A. The Delaware was built in excess of Lloyds' highest class under a special survey of Lloyds' and our own surveyors,
164 and was fitted out for sea under the supervision of Captain I. B. Robinson, who had the overlooking of the steamer and two others building for the Anglo-American Oil Company, Limited. Since she was launched she has been kept in a thoroughly seaworthy condition, and the steamer was manned by thoroughly competent officers and engineers, and the crew exceeded the number required by the board of trade for a steamer of her size, and the steamer was properly equipped with all necessary appliances on board on the voyage on which the collision took place.

Seventh interrogatory. If you know any further acts favorable to the case of the claimant herein state the same as fully and particularly as though especially interrogated in regard thereto.

A. No, I have nothing further to add.

Mr. PUTNAM reads cross-interrogatories as follows:

First cross-interrogatory. If you state that you know how long Captain Thomas has been employed by the owner of the Delaware, state on what vessel or vessels he has been so employed. State whether or not you have made any inquiries at the board of trade as to the result of any investigations made by them into maritime casualties occurring upon vessels in which he was so employed. State any

other investigations that you may have made as to Captain Thomas's previous qualification?

A. Captain Thomas served in the Manhattan as second officer about one year and six months; he was chief officer for four months, and as captain for about one year and ten months, and he joined the Delaware in June, 1893, after her fitting out by the builders. No inquiry has ever been made by the board of trade into the conduct of Captain Thomas whilst employed in the above steamers. I have made no other investigation, and I have never been called upon to do so.

Second cross-interrogatory. Give the same information in respect to the second officer and also the third officer as asked in
165 the preceding interrogatory with respect to Captain Thomas.

A. Mr. Dowbiggin joined the Delaware as third officer in June, 1893, and was promoted to be second officer in August, 1893. No inquiries have been made by the board of trade into the conduct of Mr. Dowbiggin whilst in the steamship Delaware.

Third cross-interrogatory. At what time was the steamship Delaware built? By whom was she built: and who supplied her engines and machinery?

A. The Delaware was built in 1893 by Messrs. David J. Dunlop & Company, who also supplied the engines and machinery.

Fourth cross-interrogatory. Do you know with what reversing gear the steamship Delaware was supplied or equipped at the time when she was first built? If able, describe the reversing gear; how it was operated, and whose patent or patents are used in it?

A. The reversing gear was made and supplied by Messrs. Brown Bros. & Co., of Edinburgh. It is a steam and hydraulic gear—direct action. It is Brown Bros. & Company's patent. It is the most universally used steering gear in the world, and the most simple and quick. It is steam and hydraulic gear, direct action, and it is just by the moving of a handle a few inches one way to go ahead, and a few inches in the opposite way to go astern. That is how it is operated.

Fifth cross-interrogatory. Has any new improved reversing gear been put in the Delaware since she was first built? If so, state when, and whose gear was put in and what patent, if any, and by whose recommendation the new reversing gear was put in?

A. No. No other gear has been put —.

Sixth cross-interrogatory. Who has charge for the Anglo-American Oil Company of the engines and machinery of the steamers employed and run by said company? Give the name of the chief engineer or consulting engineer so employed?

A. I am the superintendent engineer of the company.

166 Seventh cross-interrogatory. State whether or not, to your knowledge, any tests have been made of the Delaware; how quickly she can be put full speed astern from full speed ahead; and within what distance she can be brought to a stand-still. If you answer the foregoing inquiry, state who made the tests, when and where they were made, and whether said tests have been made on more than one occasion, giving the results.

A. No, I have never had any test made in regard to the question asked in this cross-interrogatory.

Eighth cross-interrogatory. With whom have you conferred with respect to your answer to the foregoing direct and cross interrogatories, or to either of them? If you have received any communication, written or oral, state from whom, and annex a copy thereof, if in writing, to your answers hereto.

A. No, I have not conferred with any one. I have received no communication, written or oral, in connection with it, and I have given my answers of my own knowledge.

167 *Opinion.*

MAY 7, 1894.

BENEDICT, *J.*:

This is an action brought by the owner of the tug Talisman, to recover for the loss of that tug, which was sunk at about 10 o'clock on the morning of September 16, 1893, by the steamer Delaware, in Gedney's channel.

The steamship was inward bound, the tug was towing the pilot-boat Edmund Driggs to her station and was crossing Gedney's channel towards the line of the black buoys. The Talisman was struck on her port side by the Delaware. The fireman on the tug was killed while attempting to cast off the towing line, the captain's arm was broken and several of the crew were thrown overboard.

The fault of the Delaware is clearly proved, the only question remaining for consideration is whether there was a fault on the part of the tug. The faults charged against the tug are, first, in omitting to stop and reverse when risk of collision was evident. Second, that the engineer of the tug left his post at a critical moment when he ought to have executed an order which might have avoided the collision.

I find neither of these charges sustained. The tug had an undoubted right to cross Gedney's channel as she did. It was the duty of the steamship to avoid her, and it was equally the duty of the tug to keep up her speed. In my opinion it would have been a fault on the part of the tug to have stopped under the circumstances. The vessels were on crossing courses and in Gedney's channel. When the Delaware approached near to the tug, the tug had reached the western side of the channel. The situation justified the pilot of the tug in supposing that the steamship would go under his stern or stop, and repelled any supposition that the steamship would pass ahead of him and over to the western side of the channel. If he had acted on such a supposition and stopped he
168 would have been in fault. I also find that the collision was in no way attributable to the fact that the engineer of the tug left the engine and ran at the last moment to save his life.

There must be a decree for the libellant, with an order of reference to ascertain the damages.

At a stated term of the district court of the United States of America, for the eastern district of New York, held at the United

States court-rooms, in the city of Brooklyn, on Tuesday, the third day of July, in the year of our Lord one thousand eight hundred and ninety-four.

Present: The Honorable Charles L. Benedict, district judge.

CHARLES H. WINNETT *et al.*
against
THE "DELAWARE," HER ENGINES, ETC.

A motion having been made on behalf of the libellant, Winnett, to amend the libel by increasing the amount claimed for personal injuries to the libellant, Charles H. Winnett, and having heard Mr. H. Putnam for the libellants, and Mr. J. Parker Kirlin for the claimant,

It is ordered that said motion be, and the same hereby is granted, and that the libel be, and the same hereby is amended so as to allege the damages from personal injuries and sufferings sustained by said libellant at the sum of five thousand dollars.

CHAS. L. BENEDICT.

(Endorsed:) Order amending libel; filed and entered the 3d day of July, 1894.

169 At a stated term of the district court of the United States of America for the eastern district of New York, held at the United States court-rooms, in the city of Brooklyn, on the 7th day of August, in the year 1894.

Present: The Honorable Charles L. Benedict, district judge.

CHARLES H. WINNETT, JOHN FLANNERY, EDWARD L. C. BUYATTI, CONRAD FALKENBERG, JAMES WALLE, and ERNEST LUNDGREN
against
THE STEAMSHIP "DELAWARE," HER ENGINES, ETC.

The commissioner having reported that there is due to the libellants, as owner and crew of the tug Talisman, for damages sustained by the collision in the libel set forth, the sum of twenty thousand nine hundred and sixty-nine and $\frac{46}{100}$ dollars, and exceptions to said report having been filed and having been duly argued. It is

Ordered that said exceptions be overruled, and that said report be in all things confirmed.

It is thereupon ordered, adjudged and decreed that the libellants above named recover herein the sum of twenty thousand nine hundred and sixty-nine $\frac{46}{100}$ dollars, their damages as reported, with thirty $\frac{24}{100}$ dollars interest to this date, and three hundred and nineteen dollars, their costs as taxed, making together the sum of twenty-one thousand, three hundred eighteen $\frac{70}{100}$ dollars, and that said steamship be condemned therefor.

170 And it is further ordered, that, unless proceedings herein are stayed by an appeal or this decree fulfilled or satisfied within the time limited by the rules and practice of this court, that the stipulators for value and costs on the part of the claimant cause

the engagements of their stipulations to be performed, or show cause within four days after the expiration of the time to appeal, or on the first day of jurisdiction thereafter, why execution should not issue against them, their goods, chattels and lands.

CHAS. L. BENEDICT.

(Endorsed:) Final decree. Filed and entered August 7, 1894.

171 United States District Court, Eastern District of New York.

CHARLES H. WINNETT, JOHN FLANNERY, EDWARD L. C. BUYATTI, Conrad Falkenburg, James Walle, and Ernest Lundgren, Libellants,

against

THE STEAMSHIP "DELAWARE," HER ENGINES, &c.; THOMAS THOMAS, Claimant.

Please take notice that the claimant appeals to the United States circuit court of appeals, for the second circuit, from the final decree entered in favor of the libellants herein, and filed in the office of the clerk of this court on the 9th day of August, 1894.

Yours, &c.,

CONVERS & KIRLIN,
Proctors for Claimant, Appellant.

August 18th, 1894.

To B. Lincoln Benedict, Esq., clerk; Messrs. Wing, Shoudy & Putnam, proctors for libelants.

(Endorsed:) Notice of appeal. Filed August 18, 1894.

172 United States Circuit Court of Appeals for the Second Circuit.

CHARLES H. WINNETT *et al.*, Libellants,

against

THE STEAMSHIP "DELAWARE;" THOMAS THOMAS, Claimant, Appellant.

The claimant and appellant assigns error to the final decision and decree in this cause as follows:

I. For that the court found the Delaware in fault.

II. For that the court did not find the Talisman in fault.

III. For that the court did not find the Talisman was in fault for unnecessarily interfering with the navigation of Gedney's channel by the Delaware, and in needlessly embarrassing the steamer's efforts to enter the said channel between the outer buoys, which mark off the course at that place for ocean-bound vessels and vessels of deep draft.

IV. For that the court did not find the Talisman in fault for failing to slacken speed or stop and reverse, when the risk of collision became imminent.

V. For that the court did not find the Talisman in fault because

her engineer left the engine-room at a critical moment before the collision, and was not there to answer a signal given to the engine-room from the pilot-house.

173 VI. For that the court found it was the duty of the Talisman, under the circumstances, to keep up her speed.

VII. For that the court omitted to find that special circumstances existed, which made it the duty of the Talisman to slacken her speed or stop and reverse, in order to avoid immediate danger, as required by article 23 of the regulations.

VIII. For that the court omitted to hold the Talisman in fault for neglect of the precautions required by the ordinary practice of seamen, and by the special circumstances of the case, as required by article 24 of the regulations.

IX. For that the court found that the situation justified the pilot of the Talisman in supposing that the Delaware would go under her stern or stop, and repelled any supposition that the steamship would pass ahead of her, and that if he had acted under such a supposition and stopped, he would have been in fault.

X. For that the court omitted to sustain the defense set up in the ninth article of the answer, that if the court should find negligence or fault on the part of the Delaware, contributing to the said collision, that, nevertheless, under section 3 of an act of Congress, entitled An act relating to the navigation of vessels, etc., approved February 13, 1893, neither the Delaware nor her owner became or was liable to be held responsible for damage or losses resulting therefrom.

XI. For that the court entered a decree against the Delaware for the whole damages sustained by the collision.

CONVERS & KIRLIN,
Proctors for Claimant, Appellant.

(Endorsed:) Assignments of error. Filed Sept. 4, 1894.

174 U. S. District Court, Eastern District of N. Y.

CHAS. H. WINNETT *et al.*
vs.
S. S. "DELAWARE."

It is hereby stipulated that the following papers be omitted from the printed record on appeal to the United States circuit court of appeals.

1. Interlocutory decree.
2. Testimony on reference.
3. Referee's report.
4. Exceptions to referee's report.

WING, SHOUDY & PUTNAM,
Proctors for Lib'l'ts.
CONVERS & KIRLIN,
Proctors for Cl'm't.

(Endorsed:) Stipulation. Filed Sept. 6, 1894.

UNITED STATES OF AMERICA,
Eastern District of New York, } *ss:*

I, B. Lincoln Benedict, clerk of the United States district court for the eastern district of New York, do hereby certify that the foregoing is a true record of the pleadings, proofs and papers on appeal, on file in my office, in the suit of Charles H. Winnett *et al.*, against The Steamship Delaware, her engines, &c., Thomas Thomas, claimant, made up to be transmitted to the United States circuit court of appeals for the second circuit, pursuant to rule.

In witness whereof I have hereunto set my hand and
[L. S.] affixed the seal of said court at the city of Brooklyn, this 10th day of September, 1894.

B. LINCOLN BENEDICT, *Clerk.*

175 United States Circuit Court of Appeals for the Second Circuit.

CHARLES H. WINNETT, JOHN FLANNERY, EDWARD L. C. BUYATTI, Conrad Falkenberg, John Walle, and Ernest Lundgreen, Libelants and Appellees,

against

THE STEAMSHIP "DELAWARE," HER ENGINES, &c., and THOMAS THOMAS, Claimant and Appellant.

A decree in favor of the libelants in this cause having been made in the district court of the United States for the eastern district of New York and an appeal having been taken therefrom to this court, and the cause having come for final hearing, certain questions of law arose, concerning which this court desires the instruction of the Supreme Court of the United States for its proper decision. The facts out of which the questions arose are as follows:

Statement of Facts.

The libel to recover damages by collision was filed by the owner, master, and crew of the steamtug Talisman, which was sunk on September 16, 1893, by the steamship Delaware, in Gedney's channel, at the outer entrance of New York harbor, and within three miles from land.

The steamship Delaware was engaged in the business of transporting petroleum in bulk from American ports to Europe. She
176 was returning from London to New York without cargo, having water ballast only, as was customary on her westward voyages. When approaching New York she took a duly licensed Sandy Hook pilot, who was in charge of her navigation at the time of the collision. By the negligence of this pilot, who failed to take any precautions to avoid the Talisman, the steamship struck and sank the tugboat Talisman. One of the crew was drowned and severe personal injuries were sustained by the master.

The decree of the district court awarded damages for the loss of the tugboat, and the personal injuries of the master.

The collision having been caused by the negligent navigation of the Delaware, it was nevertheless claimed that neither the said steamship nor her owners were liable therefor by reason of section 3 of an act of Congress of the United States entitled "An act relating to navigation of vessels, bills of lading, and to certain obligations, duties, and rights in connection with the carriage of property," approved February 13, 1893 (being 27 Statutes at Large, 2d session, chap. 105).

In support of said defense it was shown that the Anglo-American Oil Company, a corporation of Great Britain, was the owner of the steamship Delaware, and that due diligence had been exercised by the said company to make said steamship in all respects seaworthy and properly manned, equipped, and supplied within the provisions of section 3 of said act.

Upon these facts this court desires instructions upon questions of law for the proper decision of said cause, viz:

1. Whether the provisions of the third section of said act of Congress exonerate a merchant vessel from loss or damage to another vessel by collision resulting from faults in navigation, provided the owner of such merchant vessel has exercised the diligence required by the said section.

2. Whether said act exonerates a vessel which at the time is in ballast and not transporting merchandise or cargo.

177 3. Whether said act is to be construed to relieve the owner of a British vessel from liability for collision in American waters when in charge of a duly licensed Sandy Hook pilot, taken as required by law.

4. Whether said act is to be construed to relieve a vessel or its owners from liability to those on another vessel who may sustain personal injuries arising from negligent collision.

5. Whether upon the above statement of facts, the steamship Delaware is exonerated for her collision with the tug Talisman and for the damages to person and property resulting therefrom.

And to that end this court hereby certifies said questions to the Supreme Court of the United States.

WM. J. WALLACE,
Circuit Judge.
E. HENRY LACOMBE,
Circuit Judge.
N. SHIPMAN, *Circuit Judge.*

(Endorsed:) U. S. circuit court of appeals for the second circuit. Charles H. Winnett and others, lib'ts & appellees, against The Steamship Delaware, her engines, &c., and Thomas Thomas, claimant and appellant. Request for instructions. United States circuit court of appeals, second circuit. Filed Mar. 11, 1895. James C. Reed, clerk.

178 At a stated term of the United States circuit court of appeals, for the second circuit, held at the court-house, in the city of New York, on the 8th day of March, 1895.

Present: Honorable William J. Wallace, Honorable E. Henry Lacombe, Honorable Nathaniel Shipman, circuit judges.

CHARLES H. WINNETT, JOHN FLANNERY, EDWARD L. C. BUYATTI, Conrad Falkenberg, John Walle, and Ernest Lundgreen, Libelants and Appellees,
vs.
THE STEAMSHIP "DELAWARE," HER ENGINES, &C., and THOMAS THOMAS, Claimant and Appellant.

The appeal of the claimant from the decree of the district court of the United States, for the eastern district of New York, having come on for final hearing, and after hearing counsel, it is—

Ordered, that said final decree be and the same hereby is affirmed, with interest and costs to the appellee, subject to the decision of the Supreme Court of the United States upon the questions certified to said Supreme Court on this day, to which reference is made.

W. J. W.
E. H. L.
N. S.

179 (Endorsed:) U. S. circuit court of appeals. Chas. H. Winnett *et al.*, libelants and appellees, against The Steamship Delaware, &c., and Thomas Thomas, claimant and appellant. Order. Convers & Kirlin, proctors for cl'm't and ap'l'nt, 5 Beekman St., New York, N. Y. United States circuit court of appeals, second circuit. Filed March 11, 1895. James C. Reed, clerk.

CHARLES H. WINNETT and Others, Libelants, Appellees,
against
THE STEAMSHIP "DELAWARE;" THOMAS THOMAS, Claimant, Appellant. } No. 101.

To the honorable the judges of the United States circuit court of appeals for the second circuit:

The petition of Thomas Thomas, claimant of the Delaware, respectfully shows to the court as follows:

The petitioner's appeal in this case came on to be heard before this honorable court on March 6th and March 7, 1895, and at the conclusion of the argument an oral decision was given, holding in effect:

(1) That the pilot of the Talisman was justified in supposing that the Delaware would not attempt to pass ahead of him on the southerly side of the channel, and was not in fault for maintaining his course and speed; (2) that if his omission to slacken speed or stop should be deemed a fault, it was a fault *in extremis;* (3) that the Delaware was solely in fault for the collision; (4) that the decree appealed from should be affirmed, unless the provisions of the third section of "An act relating to navigation, approved
180 February 13, 1893," affords a defense, and that the questions arising under the statute would be certified to the Supreme Court.

Subsequently, four certain questions under the said statute were certified to the Supreme Court, for its decision, and an order of this court was entered, providing for the affirmance of the decree appealed from, subject to the answer of the Supreme Court to the questions so certified.

The petitioner respectfully prays for a rehearing of the said appeal, upon the following points:

(1) That the Talisman was in fault for failing to slacken speed or stop and reverse, in face of evident risk of collision, and of immediate danger from proceeding on her course and keeping up her speed; and (2) that the Talisman was in fault for failing to direct her course to port, in accordance with her repeated single-blast signals, and for failing to stop and reverse, in accordance with her three-blast signal.

1. Your petitioner is advised and believes that article 18 of the regulations, which requires every steamship, in approaching another ship, so as to involve risk of collision, to slacken her speed, or stop and reverse, is a cumulative precaution for the prevention of the loss of life and property in collisions, and that the rule which requires a preferred vessel, under the "starboard hand rule," to keep her course and speed, is subject to article 18, and also to articles 23 and 24, which require every steamship to stop, for the purpose of avoiding immediate danger; that the starboard side of the Delaware was in view of those on board the Talisman, and her tow, the Driggs, until the instant of collision, and nobody aboard either of those vessels noticed any swing or indication of an intent to swing, as under a port helm, so as to pass under the stern of the pilot-boat; that on the evidence of Captain Winnett himself, the swing, if any, was as under a starboard helm, which, if true, would have increased the risk of collison, and afforded a further reason requiring him to slacken or stop; that he was not justified, from observation of the maneuvers of the other vessel, in supposing that the Delaware did not intend to pass ahead of him, since the
181 apparent indications were all that way, and the Delaware had distinctly refused to answer his single-blast signal by a single blast, which would have indicated an intent on her part to port and pass under his stern; that article 21, regulations, which requires steamships in channels to keep to the starboard side of the channel, has no application to this case, since the Delaware had not entered the channel, but was still engaged in maneuvering to enter it; and that the omission of Captain Winnett to see and apprehend the risk of collision, as it was seen and apprehended by his engineer and by the pilot on board the Driggs, was due to heedlessness on his part, and that his obstinate persistence upon his course, at the same speed, was wrongful under the circumstances, and in violation of the provisions of article 18 of the regulations aforesaid.

2. Your petitioner is informed and believes that it was the duty of the Talisman, under article 19 of the regulations, to alter the course of his vessel in accordance with the single-blast signals repeatedly made, and in accordance with the three-blast signal made shortly before the collision; that it is immaterial whether changing

his course in accordance with his signal would of itself have constituted an independent fault, for the reason that it appears from the evidence that no collision would have resulted had he made the changes indicated by his whistle, as, by so doing, he would have crossed the course of the Delaware ahead of the point at which she would have stopped, or he would have stopped before reaching the line of the Delaware's course; that whether changing the course in accordance with the signals would have been a fault or not, the necessity of changing necessarily followed by statute, after the whistle signals were given; and that the refusal of the court so to hold virtually amounts to overruling a previous decision of this court in Singlehurst *v.* La Compagnie Generale Transatlantique, 11 U. S. App., 693.

Your petitioner further prays, that if this honorable court
182 denies a rehearing as prayed, that it will be pleased to certify to the Supreme Court, for its decision, the questions:

(1) Whether, under the circumstances, the Talisman was in fault for failing to slacken speed or stop and reverse; and (2) whether she was in fault for failing to port her helm, in accordance with her repeated single-blast signals or to reverse in accordance with her three-blast signal.

And your petitioner will ever pray, &c.

THOMAS THOMAS,
By CONVERS & KIRLIN,
Proctors for Petitioner.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

E. B. Convers, being duly sworn, says: That he is one of the proctors for the above-named petitioner, and that the foregoing petition is true to the best of his knowledge, information and belief.

He further says: That from a statement of the facts in this case, made to deponent by said petitioner, deponent verily believes that the petitioner has good and satisfactory grounds upon the merits of the cause for the said petition for a rehearing, or for the certificate.

E. B. CONVERS.

Sworn to before me this 21st day of March, 1895.

FREDERICK GREEN,
[L. S.] *Notary Public, N. Y. County.*

(Endorsed:) U. S. circuit court of appeals. Charles H. Winnett *et al.*, lib'ts, app'ees, against The Steamship Delaware; Thomas Thomas, cl'm't, app't. Petition for a rehearing and order denying rehearing. Convers & Kirlin, proctors for petitioner, 5 Beekman St., New York, N. Y. Denied. W. J. W., E. H. L. United States circuit court of appeals, second circuit. Filed Mar. 21, 1895. James C. Reed, clerk.

183 At a stated term of the United States circuit court of appeals for the second circuit, held at the court-rooms, in the city of New York, this 21st day of March, 1895.

Present: Hon. William J. Wallace, Hon. E. Henry Lacombe, Hon. Nathaniel Shipman, circuit judges.

CHARLES H. WINNETT *et al.*, Libellant-, Appellant-,
against
THE STEAMSHIP "DELAWARE;" THOMAS THOMAS, Claimant, Appellant.

A petition for a rehearing, or, in the alternative, for the certification of certain further questions to the Supreme Court of the United States herein, having been submitted to the court by the proctors for the appellant petitioner, it is now, upon consideration,

Ordered that the said petition for a rehearing, or, in the alternative, for the certification of further questions to the Supreme Court of the United States herein, be and the same hereby is denied.

W. J. W.
E. H. L.
N. S.

(Endorsed:) U. S. circuit court of appeals. Charles H. Winnett *et al.*, lib'ts, app'es, against The Steamship Delaware, Thomas Thomas, cl'm't, app't. Order denying rehearing. Convers & Kirlin, proctors for petitioner, 5 Beekman St., New York, N. Y. United States circuit court of appeals, second circuit. Filed Mar. 21, 1895. James C. Reed, clerk.

184 UNITED STATES OF AMERICA, *Southern District of New York,* } ss:

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 183, inclusive, contain a true and complete transcript of the record and proceedings had in said court in the case of Charles H. Winnett, John Flannery, J. E. L. C. Buyatti, Conrad Falkenberg, James Walle and Goss Lundgreen, libelants appellees, against The Steamship Delaware, her engines, &c., Thomas Thomas, claimant appellant, as the same remain of record and on file in my office.

In testimony whereof, I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 23d day of March, in the year of our Lord one thousand eight hundred and ninety-five and of the Independence of the said United States the one hundred and nineteenth.

[Seal United States Circuit Court of Appeals, Second Circuit.]

JAMES C. REED, *Clerk.*

185 UNITED STATES OF AMERICA, *ss:*

Seal of the Supreme Court of the United States.

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the second circuit, Greeting:

Being informed that there is now pending before you a suit in which The Steamship "Delaware," her engines, &c., Thomas Thomas, claimant, is appellant and Charles H. Winnett, John Flannery, J. E. L. C. Buyatti, Conrad Falkenberg, James Walle, and Goss Lundgreen, libellants, are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the district court of the United States for the eastern district of New York, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of appeals and removed into the Supreme

186 Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the third day of April, in the year of our Lord one thousand eight hundred and ninety-five.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

UNITED STATES OF AMERICA,
Southern District of New York, } *ss:*

I, James C. Reed, clerk of the United States circuit court of appeals for the second circuit, by virtue of the foregoing writ of certiorari and in obedience thereto, do hereby certify that the following pages, numbered 4 and 5, contain a true and complete transcript of the record and proceedings had in said court in the cause of Charles Henry Winnett, John Flannery, E. L. C. Buyatti, Conrad Falkenberg, James Walle, and Goss Lunngrund, libellants and appellees, *vs.* The Steamship "Delaware," her engines, etc., Thomas Thomas, claimant and appellant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 16th day of April, in the year of our Lord one thousand eight hundred and ninety-five, and of the Independence of the United States the one hundred and nineteenth.

Seal United States Circuit Court of Appeals, Second Circuit.

JAMES C. REED, *Clerk.*

187 [Endorsed:] Supreme Court of the United States. No. 959. October term, 1894. The Steamship "Delaware," &c., Thomas Thomas, claimant, appellant, *vs.* Charles H. Winnett *et al.* Writ of certiorari.

188 United States Circuit Court of Appeals for the Second Circuit.

THE STEAMSHIP DELAWARE, THOMAS THOMAS, Claimant,
against
CHARLES H. WINNETT and Others, Libelants.

It is hereby stipulated that the certified copy of the transcript of the record in the circuit court of appeals herein filed on the application for the writ of certiorari herein and now on file in the office of the clerk of the Supreme Court of the United States be taken as the return to the writ of certiorari issued by the Supreme Court, and that the clerk of the circuit court of appeals may attach this stipulation to the writ as his return thereto.

CONVERS & KIRLIN,
Proctors for S. S. Delaware.
WING, SHOUDY & PUTNAM,
Proctors for Winnett and Others.

[Endorsed:] United States circuit court of appeals, second circuit. Filed Apr. 16, 1895. James C. Reed, clerk.

189 [Endorsed:] Supreme Court of the United States. Steamship Delaware, Thomas Thomas, claimant, against Charles H. Winnett *et al.* Return to writ of certiorari.

190 [Endorsed:] Case No. 15,843. Supreme Court U. S., October term, 1894. Term No., 570. The Steamship Delaware, &c., app't, *vs.* Chas. H. Winnett *et al.* Writ of certiorari and return. Filed April 25, 1895.

Endorsed on cover: Case No. 15,843. U. S. circuit court of appeals, second circuit. Term No., 570. The Steamship "Delaware," her engines, &c., Thomas Thomas, claimant, appellant, *vs.* Charles H. Winnett *et al.* Petition filed March 25, 1895. Return filed April 25, 1895.